

No. 15151

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United States  
Court of Appeals  
for the Ninth Circuit

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,  
vs.

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 12,  
Respondent.

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Transcript of Record

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Petition for Enforcement of an Order of the  
National Labor Relations Board

FILED

OCT 13 1956



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## APPEARANCES

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United States of America Before the National  
Labor Relations Board

Case No. 21-CC-198

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 12,

and

MRS. EDWIN SELVIN.

Case No. 21-CC-200

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 12,

and

MRS. EDWIN SELVIN.

ERNEST L. HEIMAN, ESQ.,  
For the General Counsel.

JAMES M. NICOSON, ESQ., and  
DAVID SOKOL, ESQ.,  
For the Respondent.

EDWIN SELVIN, Pro Se.

Before: Wallace E. Royster, Trial Examiner.

INTERMEDIATE REPORT AND  
RECOMMENDED ORDER

Statement of the Case

Upon charges filed by Mrs. Edwin Selvin, the  
General Counsel of the National Labor Relations

Board issued his consolidated complaint, dated June 21, 1955, against International Union of Operating Engineers, Local 12, herein called the Respondent,<sup>1</sup> alleging that the Respondent had committed unfair labor practices within the meaning of Section 8(b) (4) (A) and (B) and Section 2(6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act.

In respect to unfair labor practices, the complaint alleges that the Respondent has induced and encouraged employees of Yankee Body Shop, of Crowell & Larson, of Paving Materials Company, and of Union Pacific Railroad Company to engage in strikes or concerted refusals in the course of their employment to perform services for their respective employers with an objective of forcing or requiring their employers to cease doing business with Crook Company, hereinafter Crook, and to force or require Crook to recognize or bargain with the Respondent as the collective bargaining representative of Crooks employees. As further violations, it is alleged that the Respondent has induced and encouraged employees of Ralph Welker and of McCammon-Wunderlich Company to engage in strikes or concerted refusals in the course of their employment to perform services for their respective employers with an objective of forcing or requiring their employers to cease doing business with Shepherd Machinery Company, hereinafter Shepherd,

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<sup>1</sup>The complaint alleges, the answer does not deny, and I find that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

and to force or require Shepherd to recognize or bargain with the Respondent as the collective bargaining representative of Shepherd's employees.

The Respondent has filed an answer denying all material allegations in the complaint.

Pursuant to notice a hearing was held before the undersigned in Los Angeles, California, from July 25 through 28, 1955.<sup>2</sup> All parties were represented and participated in the hearing. A brief has been received from counsel for the Respondent.<sup>3</sup>

Upon my observation of the witnesses and upon the entire record in the case, I make the following:

### Findings of Fact

#### I. The Business of Crook and Shepherd<sup>4</sup>

Crook Company is a corporation engaged at Los Angeles, California, in sales and servicing of construction equipment. Its annual sales of equipment exceed \$1,000,000 in value, of which more than

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<sup>2</sup>The all-party stipulation to correct p. 115, l. 24 of the transcript so that the number there set forth will read 6Z6450 is approved and the correction noted.

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<sup>3</sup>Respondent's motions to dismiss the complaint are denied except to the extent hereinafter set forth.

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<sup>4</sup>I find no merit in Respondent's contention that the testimony of witnesses concerning the business operations of Crook and Shepherd is uncorroborated hearsay or that it is otherwise not probative. I find both to be in commerce within the meaning of the Act.

\$100,000 in value is sold to purchasers outside the State of California. About 90 per cent of the equipment purchased for resale is manufactured in States other than the State of California.

Shepherd is a partnership, engaged at Los Angeles, California, in sales and service of construction and farm equipment. Shepherd's purchases of such equipment from a manufacturer in Peoria, Illinois, exceed \$1,000,000 in value annually. Its shipments of equipment to purchasers outside the State of California exceed \$100,000 in value annually.

## II. The Unfair Labor Practices

### A. Concerning Crook

About February 17, 1955, the Respondent established pickets at Crook's premises. On March 3, when a consent election agreement was executed between the Respondent and Crook, the pickets were withdrawn. A representation election was conducted on March 9. No bargaining representative was chosen. Upon the ascertainment of that result Respondent's pickets reappeared and intermittently have remained. On May 17, the Respondent by letter to Crook denied that it was asserting any claim to have status as bargaining representative for Crook's employees.

1. Leroy Campbell, a Crook employee, testified that on March 15 he drove a truck, presumably the property of his employer, to Yankee Body Shop in

Los Angeles. According to Campbell he was followed by a man in a gray Chrysler sedan<sup>5</sup> who spoke to an employee of Yankee before Campbell delivered the truck. Campbell testified that he had seen the driver of the Chrysler on many occasions among the pickets before the Crook shop and that on at least one such occasion the driver appeared to be directing the pickets. Campbell delivered the truck and left.

Ralph H. Ritz, an employee of Yankee Body Shop, a member of the International Association of Machinists, and shop steward for that organization at the place of his employment, testified that when some time in March a truck was brought to Yankee Body Shop, a man asserting himself to be an agent for the Operating Engineers told Ritz that the truck had come through a picket line at Crook; that the truck was "hot."<sup>6</sup>

The Respondent offered no evidence concerning this incident.

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<sup>5</sup>The evidence establishes that the Respondent is the owner of a gray Chrysler sedan which on an earlier occasion was used to follow another Crook driver. I do not consider this circumstance to establish, however, that the Chrysler observed by Campbell was Respondent's property.

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<sup>6</sup>Ritz had no recollection on the stand of hearing the word "hot" but testified that when he employed that word in a statement earlier given to a Board Field Examiner and when he testified to its utterance in an ancillary proceeding in the U. S. District Court, he was relying then upon a truthful recollection.



2. Fred Neuenschwander, a Crook employee, testified that on March 30 he went to a job in Glendora, California, where Crowell & Larson were operating some equipment. Neuenschwander's purpose was to make adjustments on machines which had been delivered to Crowell & Larson by Crook the previous day. Neuenschwander arrived on the job at about 11:45 a.m. and started to work. Crowell & Larson workers were then midway through their lunch period which had begun at 11:30. In about 15 or 20 minutes Joseph Mussro, a representative of the Respondent, approached and asked Neuenschwander the name of his employer and if he had come through a picket line. Neuenschwander answered the questions. Mussro then said Neuenschwander had better leave but almost immediately withdrew the suggestion by saying in a loud voice, probably audible to the Crowell & Larson employees who were standing nearby, "Well, you can go ahead and work, but we are not going to work." Neuenschwander said that he would be through with his job in a short time and continued at work. Neuenschwander left at about 12:15 p.m. having completed his job. Mussro and the Crowell & Larson employees were then in a conversation; none had returned to work after the lunch recess.

Tony Dias, a member of the Respondent and foreman for Crowell & Larson on the Glendora job, testified that he observed Neuenschwander and then Mussro arrive on the job. According to Dias,

had their lunch period on March 30 from 11:30 to noon. Upon his arrival Mussro asked what a Crook employee was doing on the job and was informed that the man was adjusting a Tournapull. Dias overheard Mussro tell Neuenschwander that the men would not work with him on the job. Mussro then checked the union membership cards of the Crowell & Larson employees and asked them if they did not know that a picket line existed at Crook and that it was "wrong" for a Crook employee to make repairs to equipment that could be made by members of the Respondent. Noticing that two Tournapulls appeared to be new, Mussro asked Dias if they had come through the Crook picket line. A few minutes before 1:00 p.m. Dias remarked that the men should return to work. Mussro agreed that they might do so but, having taken the serial numbers of the new Tournapulls, said that if he learned that the machines had come through the picket line, he would return and "shut down tight." Upon Mussro's departure, the men returned to work. Their employer, Crowell & Larson, did not pay them for the hour consumed by Mussro's visit.

Eugene Smedley, a Crowell & Larson employee, a member of the Respondent, and a witness to this incident, testified that Mussro asked if the employees knew that Crook was being picketed. Smedley overheard Mussro tell Neuenschwander that Respondent's members on the job would not work as long as Neuenschwander was on the job.

After checking membership cards, Mussro told the Crowell & Larson workers that they would violate some requirement of the Respondent if they worked while a Crook employee was on the job. Mussro said, according to Smedley, that if he discovered that the new Tournapulls had come through the picket line, he would return and shut down the job permanently and told the men to quit at once if a Crook employee returned to the job. Mussro left at about 12:55 p.m. and upon his departure the men resumed work, having been idled about one hour.

Joseph Mussro, one of the Respondent's business representatives, testified that he was at the Crowell & Larson job on March 30, that he spoke to Neuenschwander asking how long the adjustments would take, that he then checked Union cards and took the serial numbers of the new Tournapulls. Mussro denied that he suggested or directed that anyone cease work or refuse to work because of Neuenschwander's presence or that he made any mention of closing the job permanently. He explained that he collected serial numbers of equipment such as Tournapulls as a hobby. According to Mussro, he remained on the job about 30 minutes and left well before 1:00 o'clock.

3. Valentine Santillan, a Crook employee, on April 19 went to the freight dock of the Union Pacific Railroad Company in Los Angeles to prepare two rollers for delivery to Crook customers. According to Santillan, he was followed from the Crook shop by William Willis, a vice-president and



business representative of the Respondent. While Santillan and another Crook employee, Soles, were preparing the roller for delivery and maneuvering it from a flatcar to the freight dock, Willis remained on the scene. After about 2 hours Louis Vlashart, an employee of Paving Materials Company,<sup>7</sup> appeared to take delivery of one of the rollers. As Santillan prepared to move the roller from the dock to the bed of Vlashart's truck, Willis came over and spoke to Vlashart. Vlashart then left, apparently to make a telephone call, and upon his return spoke again to Willis. Willis and another who had accompanied him, obtained picket signs from their car and began picketing alongside the dock.<sup>8</sup> Vlashart then refused to accept the roller. Jessie Sands, described as an employee of Union Pacific, then spoke to Willis. Picketing ceased and Willis and his colleague departed. Vlashart, saying that he could not take the roller because of the picketing, had already done so. The picketing had taken place for a period of about 15 minutes beside the dock where the roller was situated for unloading.

Louis Vlashart testified that on April 19 he drove to the Union Pacific dock to pick up a roller. When he pulled his truck alongside the dock in preparation for loading, according to Vlashart, Willis ap-

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<sup>7</sup>Vlashart was one of three drivers employed by Paving Materials Company.

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<sup>8</sup>The wording of the picket signs does not appear.

proached him and asked if he knew that the roller was "hot." Vlashart said that he did not, whereupon Willias advised him that there was a picket line at the Crook shop, that the roller was "hot"; and suggested that Vlashart telephone the business agent of his union for advice. Vlashart answered that his employer had instructed him to take delivery if no picket line existed. Willis, or his companion, then said, "Well, if that is all it takes, we'll put one up right now." Both then took picket signs from the car in which they had been sitting and paraded in the vicinity of the truck and loading dock. Upon the telephoned advice of his employer, Vlashart then drove away leaving the roller.

Willis did not testify concerning this incident.

I do not consider the evidence to establish by the requisite preponderance that the individual who spoke to Ritz at Yankee Body Shop concerning the Crook truck was an agent of the Respondent. I credit Campbell's testimony that he had seen the man at the picket line before Crook's premises where he appeared upon occasion to direct the conduct of the pickets. This is insufficient to prove, however, that he followed the Crook truck at the direction of the Respondent for it may well be that his agency, if any, was specific rather than general and thus restricted to the picket line. His self-identification to Ritz as a representative of the Respondent might estop him from denying the agency but, of course, does not establish it. The precept that an agency may not be proved by the declara-

tions of the purported agent is rooted in sound principle. Ritz did not testify that this person, not identifiable from the record, was such an agent but only that he asserted himself to be such. The Respondent cannot be held liable for the conduct of one whose identity is not shown and whose authority to speak for it rests upon speculation. I conclude that the General Counsel has failed to establish any violation of the Act by virtue of the incident at Yankee Body Shop.

I credit the testimony of Dias and Smedley that Mussro said in their presence and within hearing of other Crowell & Larson employees that they would not work as long as a Crook employee was on the job. I further credit their testimony that Mussro said he would stop the men from working if he discovered that the Tournapulls came through the picket line. In reaching this conclusion I have, of course, refused to credit the denials of Mussro that he induced and encouraged Crowell & Larson employees in such fashion. I find that Mussro stayed at the job site for about 1 hour and that he was not occupied for that period in routine checking of union cards. Mussro's sworn testimony that he took the serial numbers from the Tournapulls in the practice of a hobby was deliberately false. I consider his entire testimony concerning the incident, except to the extent it was corroborated by Dias and Smedley, to be unworthy of credit.

The testimony of Santillan and Vlashart is uncontroverted and is credited. It follows that Willis

induced and encouraged Vlashart to refuse to accept delivery of the roller from Crook and that Vlashart was thus induced and encouraged to refuse to perform services for his employer. A purpose of the picketing on this occasion was to prevent Paving Materials, Vlashart's employer, from doing business with Crook. Willis was told what action was necessary to prevent acceptance of the roller and took it. The fact that Paving Materials instructed its driver to leave rather than take the roller in these circumstances affords no shield for the Respondent but serves only to accentuate the effectiveness of its picketing. I find no evidence that the picketing on this occasion was directed in any fashion toward employees of Union Pacific or that it took place at a point where it naturally would have the effect of inducing or encouraging them to refuse to perform services. In consequence I find no violation of the Act established by the evidence concerning any employee of Union Pacific.

#### B. Concerning Shepherd

The Respondent has never been certified as bargaining representative of Shepherd's employees but on May 23, 1955, placed pickets at Shepherd's premises bearing signs reading, "This firm is non-union." Later the signs were replaced by others reading, "Shepherd Tractor Company is unfair to organized labor." In March and April representatives of the Respondent asked Shepherd to sign a contract covering employees within Respondent's

jurisdiction. Shepherd suggested that an election be arranged in order to ascertain the employee's desired in the matter. This suggestion was rejected and the pickets appeared. Shepherd filed a representation petition with the Board on April 8. It was dismissed when Respondent disclaimed interest in becoming bargaining representative. Shepherd again filed a petition on May 15. Respondent then suggested a meeting to discuss an agreement.

1. On April 22, 1955, Leland Caquelin and Alfred Wladyka, both mechanics in Shepherd's employ, went to a construction site near or in Creal, California, to make repairs on machinery leased by Shepherd to Ralph Welker. The day passed without significant incident. Robert C. Rodgers, a member of the Respondent, and his helper, Busby, both employees of Welker, assisted the Shepherd employees in making the repairs. Caquelin and Wladyka returned on the 23rd and after working about 30 minutes were approached by Manuel De Flumere, a business representative of the Respondent who invited them to join the Respondent. Some discussion ensued concerning the advantages of union membership in which De Flumere said that there was to be a "crack-down" on employers of nonunion labor, particularly Shepherd, to stop the practice of nonunion workers taking jobs from union members. De Flumere conversed briefly with Rodgers, possibly within hearing of Busby, and left. He returned within a short time and again spoke to Rodgers before taking his final leave.



Upon De Flumere's second departure, Rodgers came to Caquelin and Wladyka and told them that they would have to leave or he and Busby would. Following instruction from Shepherd that in the event of threatened trouble of this nature they should retire, Caquelin and Wladyka left the job.

Rodgers testified that he was "acting" shop foreman for Welker on the Creal job having responsibility for keeping the machinery in repair. Busby was his helper. In the even of breakdown, the equipment operator affected generally would assist Rodgers in repairing the damage and in that situation would work under Rodgers' direction. It seems clear to me, however, and I find that Rodgers was not such a supervisor as the Act defines but was a skilled mechanic who, while working at his trade, directed the efforts of his assistant, Busby or another, in performing a repair job. Rodgers testified that De Flumere told him that the Shepherd employees were nonunion; that either they or Rodgers and Busby must leave the job. De Flumere did not testify.

I find that De Flumere instructed Rodgers to refuse to perform services for Ralph Welker as long as a Shepherd employee was on the job. This instruction may not have been heard by Busby, Rodgers' helper, but it is a reasonable inference, and I draw it, that De Flumere intended Busby to follow the same instruction. Both Busby and Rodgers were members of the Respondent.

2. On May 24, Ralph Sterling, an employee of Shepherd went to a reservoir project where McCammon-Wunderlich Company, hereinafter McCammon, was performing work, for the purpose of repairing brakes on equipment which had been sold by Shepherd to McCammon. Upon his arrival in a pick-up truck bearing Shepherd's name, Sterling was accosted by a man whom he identified as "Hunt" who asked if Sterling intended to do some work there. Sterling replied that he did and "Hunt" said that in such event he would "close the job down." Sterling went to report this development to Bob Bothel, McCammon's head mechanic, and while he was doing so "Hunt" drove about the project giving a "thumbs up" sign. According to Sterling this is a signal to equipment operators to cease work. In any event, they did so, driving their rigs to a central point and stopping the progress of the job.

Clint Waggoner, McCammon's superintendent, learning of the work stoppage, appeared on the scene, directed Sterling to leave, and told Red Hunter, Respondent's job steward on the reservoir project, that the Shepherd employees were leaving and that Hunter could send the men back to work. Work was resumed after an interruption of about 20 or 30 minutes. Waggoner then telephoned J. H. Seymour, a representative of the Respondent, and complained of the stoppage. Seymour answered that there was a picket line at the Shepherd shop

and that Shepherd employees would not be permitted to work at the reservoir job.

James Green, McCammon's carpenter foreman, testified that on May 24 he observed Hunter in conversation with a crane operator<sup>9</sup> who was standing on the ground beside his equipment. Green asked the operator why he was not working. Hunter answered that a Shepherd truck was on the job and, in Green's presence, told the crane operator to swing the crane boom out and drop his load or he would be fined \$100. The operator asked Green for advice and the latter suggested that he do as he was told. Hunter then left, according to Green, giving the "thumbs up" signal to other workers. In consequence all work ceased.

James Luther and Raymond Thomason, both employees of McCammon and members of the Respondent, testified that in the early morning of May 24 all of the equipment operators decided to cease work if nonunion men appeared on the job. Both testified that Hunter was not present when this decision was reached and denied that such a course of action had been suggested by any representative of the Respondent. Each testified that he quit work when he saw the Shepherd truck arrive on the job and that he saw no signal to quit work given by Hunter. Hunter did not testify.

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<sup>9</sup>The crane operator was an employee of Valley Crane Service but worked on the reservoir job under the direction of Foreman Green.



I credit the uncontroverted testimony of Foreman Green concerning Hunter's words and conduct and find that on the morning of May 24 Hunter threatened the crane operator with a fine if he did not cease work. That the operator was not paid directly by McCammon is not controlling. He was before the work stoppage performing services for McCammon under the direction of McCammon's foreman. I find further that the "thumbs up" signal which Green saw Hunter give to McCammon employees constituted a direction from Hunter as a representative of the Respondent that they cease work for McCammon. Even if Luther and Thomason testified truthfully that without suggestion or encouragement from any representative of the Respondent the equipment operators decided not to work when a nonunion man appeared on the job (and I have serious doubts concerning the veracity of this testimony) Hunter's threat to the crane operator and his signaling to other workers constituted an encouragement to them to adhere to that **determination**. The man named by Sterling as "Hunt" may just possibly have been someone other than Hunter but it is unnecessary to reach a finding on that point. If Sterling talked to and observed Hunter what he saw and heard is merely corroborative of the already credited testimony of Green. Finally, I credit the uncontradicted testimony of Waggoner that Seymour admitted it to be the purpose of the Respondent to prevent McCammon from doing business with Shepherd.

## Conclusions

By inducing and encouraging employees of Crowell & Larson and Paving Materials Company to refuse to perform services for their respective employers with an object of forcing or requiring such employers to cease doing business with Crook, the Respondents have violated Section 8 (b) (4) (A) of the Act. Harold McNeel, labor relations representative and assistant manager of the Respondent, testified that the picket lines at Crook and Shepherd existed for the purpose of protesting discharges and the practice of nonunion workers finding employment in the same field as members of the Respondent. However, this case does not place in issue the legality of the picket lines about the premises of either employer. It is only when inducement and encouragement of employees of other employers to refuse to perform services is established that a violation in the terms of this complaint occurs. Such inducement and encouragement has been found as well as one of its objectives. I am convinced and find that the other alleged objective, to force Crook to recognize the Respondent as bargaining representative of Crook employees, has also been proven. True, the Respondent has formally disclaimed such a purpose but testimony that since such disclaimer attempts have been made to persuade Crook to extend recognition is undenied. I find that in inducing and encouraging employees of Crowell & Larson and Paving Materials Company to refuse to perform services for their respective employers, the Respondent had as an

objective forcing or requiring Crook to recognize or bargain with it as the representative of Crook employees without having been certified as such representative. The Respondent thereby violated Section 8 (b) (4) (B) of the Act.

By De Flumere's instruction as to employees of Welker and by Hunter's words and signals directed to employees of McCammon, the Respondent induced and encouraged such employees to refuse to perform services for their respective employers with an object to force or require these employers to cease doing business with Shepherd. I find this to constitute a violation of Section 8 (b) (4) (A) of the Act. As in the Crook situation, another objective, at least until and on May 11, 1955, was to force or require Shepherd to recognize or bargain with the Respondent as the representative of Shepherd employees without having been certified as such representative. The Respondent thereby violated Section 8 (b) (4) (B) of the Act.<sup>10</sup>

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<sup>10</sup>It is entirely possible that the Respondent has now abandoned this objective as to both Crook and Shepherd. Its representative, McNeel, testified at this hearing that it entertained no such ambition. However, as recently as May 11, it sought a meeting with Crook, Shepherd, and other employers to negotiate an agreement. It is true that under date of May 17 the Respondent advised the Regional Office of the Board that it did not claim to represent Crook or Shepherd employees. There is reason to believe, however, that this disclaimer was tactical as within a week or 10 days one of Respondent's representatives requested a meeting with Crook for the purpose of reaching agreement concerning Crook's employees.

### III. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set forth in Section II above, occurring in connection with the operations of Crook and Shepherd, set forth in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

### IV. The Remedy

Having found that the Respondent has violated Section 8 (b) (4) (A) and (B), it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. For reasons set forth above, it will be recommended that the complaint be dismissed to the extent that it alleges violations to have occurred concerning Yankee Body Shop and Union Pacific Railroad.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

#### Conclusions of Law

1. International Union of Operating Engineers, Local 12, is a labor organization within the meaning of Section 2 (5) of the Act.
2. International Union of Operating Engineers, Local 12, has engaged in unfair labor practices

within the meaning of Section 8 (b) (4) (A) and (B) of the Act by inducing and encouraging employees of Crowell & Larson and Paving Materials Company to engage in a strike or concerted refusal in the course of their employment to perform services for their respective employers, objectives thereof being:

(a) To force and require such employers to cease doing business with Crook Company and to force the said Crook Company to recognize or bargain with International Union of Operating Engineers, Local 12, although that organization has not been certified as the bargaining representative of Crook employees in accordance with the provisions of Section 9 of the Act.

3. International Union of Operating Engineers, Local 12, has engaged in unfair labor practices within the meaning of Section 8 (b) (4) (A) and (B) of the Act by inducing and encouraging employees of Ralph Welker and McCammon-Wunderlich Company to engage in a strike or concerted refusal in the course of their employment to perform services for their respective employers, objectives thereof being:

(a) To force and require Welker and McCammon to cease doing business with Shepherd Machinery Company; and

(b) To force and require Shepherd Machinery Company to recognize and bargain with International Union of Operating Engineers, Local 12, as



the collective bargaining representative of Shepherd employees, although that organization has not been certified as such bargaining representative in accordance with the provisions of Section 9 of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

### Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in the case, it is recommended that International Union of Operating Engineers, Local 12, Los Angeles, California, its officers, representatives, agents, successors, and assigns be ordered to:

1. Cease and desist from:

(a) Inducing and encouraging employees of Crowell & Larson and Paving Materials Company, or of other employers (other than Crook Company), to engage in a strike or concerted refusal in the course of their employment to perform services for their respective employers where an object thereof is to force or require Crowell & Larson or Paving Materials Company, or other employers, to cease doing business with Crook Company or to force or require Crook Company to recognize or bargain with the above-named labor organization as the collective bargaining representative of its employees, unless and until said labor organization

has been certified as such bargaining representative in accordance with the provisions of Section 9 of the Act.

(b) Inducing and encouraging the employees of Ralph Welker and McCammon-Wunderlich Company, or of other employers (other than Shepherd) to engage in a strike or concerted refusal in the course of their employment to perform services for their respective employers where an object thereof is to force or require Welker or McCammon or any other employer to cease doing business with the Shepherd Machinery Company or to force or require Shepherd Machinery Company to recognize or bargain with the above-named labor organization as the collective bargaining representative of its employees unless and until said labor organization has been certified as such bargaining representative in accordance with the provisions of Section 9 of the Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Post at its business office in Los Angeles, California, copies of the notice attached hereto as an appendix. Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by an official representative of Respondent, be posted by it immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all

places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for the Twenty-first Region, in writing, within twenty (20) days from the date of this Intermediate Report and Recommended Order as to what steps it has taken in compliance therewith.

It is further recommended that unless the Respondent shall within twenty (20) days from the receipt of this Intermediate Report and Recommended Order notify the said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Respondent to take the action aforesaid.

It is finally recommended that the complaint be dismissed with respect to the allegations concerning unfair labor practices involving Yankee Body Shop and Union Pacific Railroad.

Dated this 7th day of September, 1955.

/s/ WALLACE E. ROYSTER,  
Trial Examiner.



Appendix

Notice

To All Members of International Union  
of Operating Engineers, Local 12

Pursuant to

The Recommendations of a Trial Examiner  
of the National Labor Relations Board and in order  
to effectuate the policies of the National Labor Re-  
lations Act, we hereby give notice that:

We Will Not induce or encourage any employees  
of Crowell & Larson, of Paving Materials Com-  
pany, or of any other employer (other than Crook  
Company), to engage in a strike or concerted re-  
fusal in the course of their employment to perform  
services for their respective employers where an  
object thereof is to force or require Crowell & Lar-  
son or Paving Materials Company, or other em-  
ployers, to cease doing business with Crook Com-  
pany or to force or require Crook Company to  
recognize or bargain with us as the representative  
of its employees, unless and until we have been  
certified as such representative in accordance with  
the provisions of Section 9 of the National Labor  
Relations Act.

We Will Not induce or encourage any employees  
of Ralph Welker, of McCammon-Wunderlich Com-  
pany, or of any other employer (other than Shep-  
herd Machinery Company), to engage in a strike

or concerted refusal in the course of their employment to perform any services for their respective employers where an object thereof is to force or require Welker or McCammon-Wunderlich, or other employers, to cease doing business with Shepherd Machinery Company, or to force or require Shepherd Machinery Company to recognize or bargain with us as the representative of its employees, unless and until we have been certified as such representative in accordance with the provisions of Section 9 of the National Labor Relations Act.

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 12,  
(Labor Organization.)

Dated: .....

By .....,  
(Representative.) (Title.)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

United States of America  
Before the National Labor Relations Board

Case No. 21—CC—198

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 12,

and

CROOK COMPANY.<sup>1</sup>

Case No. 21—CC—200

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 12,

and

WILLARD W. SHEPHERD and NORMA D.  
SHEPHERD, d/b/a SHEPHERD MA-  
CHINERY COMPANY.

### DECISION AND ORDER

On September 7, 1955, Trial Examiner Wallace E. Royster issued his Intermediate Report in the above-entitled proceeding, finding that the Re-

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<sup>1</sup>The caption in this consolidated proceeding has been amended to show the names of the employers involved rather than the name of Mrs. Edwin Selvin, the individual who filed the charges on behalf of the employers. Furthermore, although the Intermediate Report designates Mrs. Selvin as appearing "pro se," she appeared as the representative of both employers, and the Report is hereby corrected accordingly.

spondent had engaged in certain unfair labor practices within the meaning of Section 8 (b) (4) (A) and (B) of the Act, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. He also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint, and recommended dismissal of those allegations. Thereafter, the General Counsel and the Respondent filed exceptions to the Intermediate Report and supporting briefs.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the exceptions, additions, and modifications noted herein.

#### A. Jurisdiction

1. The Trial Examiner predicated his findings regarding the business operations of both employees upon testimony of the general manager of Crook and the assistant general manager of Shepherd. The Respondent contended at the hearing, and in its exceptions and brief, that this testimony consisted of uncorroborated hearsay, conclusions, and opin-

ions, and did not constitute an adequate basis for the assertion of jurisdiction.<sup>2</sup>

However, as both witnesses were familiar with the operations of their respective companies and testified from their personal knowledge, and as the Respondent presented no witnesses and did not cross-examine the general counsel's witnesses on this issue, we find, as apparently did the Trial Examiner, that the testimony of the two officials is not only competent and credible, but of sufficient probative value to warrant the assertion of jurisdiction over both employers.<sup>3</sup>

B. The Violations of Section 8 (b) (4) (A)  
of the Act

2. The Trial Examiner found, and we agree, that the Respondent, by inducing and encouraging employees of Crowell & Larson to refuse to per-

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<sup>2</sup>The Respondent relies upon *Haddock Engineers, Ltd.*, 215 F. 2d 734 (C.A. 9, 1954), in which the Court denied enforcement of the Board's order against the respondent union on the ground that the union's objections to the adequacy of the commerce evidence were well taken. That case is distinguishable from the present one, however, as the data upon which jurisdiction was premised in that case was presented in written form, and the individual who had prepared the written material was not under oath nor available for cross-examination. See *W. B. Jones Lumber Company, Inc.*, 114 NLRB No. 79.

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<sup>3</sup>*Casey-Metcalf Machinery Co., et al.*, 114 NLRB No. 229, wherein the Board recently asserted jurisdiction over Crook.

form services for their employer with an object of forcing or requiring such employer to cease doing business with Crook, violated Section 8 (b) (4) (A) of the Act.

The Respondent began picketing the Crook premises about February 17, 1955. On March 30, Neuenschwander, a Crook employee, went to a job site of Crowell & Larson to adjust some machines which had been obtained from Crook. While he was thus engaged, Mussro, a business representative of the Respondent,<sup>4</sup> came to the job site. He asked Neuenschwander the name of his employer and whether he had come through a picket line. When Neuenschwander admitted that he had come through the picket line, Mussro first instructed him to leave, but then remanded this instruction and announced that Neuenschwander could finish his work "but we are not going to work." This remark was made, as the Trial Examiner found, within the hearing of the Crowell & Larson employees. It also appears that it was made in a loud voice, as Neuenschwander was slightly hard of hearing; and that the Crowell & Larson employees were having their luncheon at the time and had gathered in the vicinity. In addition, as the Trial Examiner found, Dias and Smedley, employed by Crowell & Larson, testified that they heard Mussro make such remarks to Neuenschwander. In these circumstances, we con-

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<sup>4</sup>It is undisputed, and we find, that Mussro, whose conduct constitutes a part of the evidence relied upon herein, was acting within the scope of his general authority on the occasion involved.



clude that Mussro's remarks were audible to the assembled Crowell & Larson employees.

What occurred thereafter supports the finding that Mussro was overheard by the Crowell & Larson employees, and also that his statement had the effect of inducing those employees to stop working until Neuenschwander left.<sup>5</sup> When the luncheon recess came to an end, the group of employees did not return to work but continued to converse with Mussro. While the Respondent contends that the men were delayed in their return to work because Mussro was making a routine check of their union cards, we note that Mussro admitted that he ordinarily checked one card at a time so that the remaining employees could proceed with their work. And the fact that the card check took considerably longer than it ordinarily did is not explained by Mussro's position that it was prolonged by certain employees raising various personal problems while he was checking the cards. The testimony of the witnesses whom the Trial Examiner credited does not support this assertion, and, in any event, there was no more reason for the entire group to be present during such discussions than for all of them to be present while Mussro checked each card.

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<sup>5</sup>Whether or not Mussro instructed the Crowell & Larson employees in so many words not to resume working after the luncheon recess until Neuenschwander left, this was clearly implicit in what he did say. See Seattle District Council of Carpenters, et al. (Cisco Construction Company), 114 NLRB No. 12.

The explanation for the delay is found, as the Trial Examiner pointed out, in the credited testimony of Dias and Smedley. According to them, while Mussro was talking to the Crowell & Larson employees, he reminded them that Crook was being picketed, told them they should not work while a Crook employee was repairing equipment at the job site, asked if the machines on which Neuenschwander had been working came through the picket line, took the serial numbers of these machines, and threatened that if he found they had come through the picket line he would return and "shut down tight."<sup>6</sup>

Although Dias was the foreman on the job, and had authority to order the men back to work, it does not follow, as the Respondent argues, that any work stoppage therefore resulted from his failure to do so. As Dias explained in his testimony, he did not direct the men to return to work because of Mussro's threat to shut down the operation if the men did not assemble as he directed. The immediate cause of the failure to return is the threat itself.

After Neuenschwander had departed, the men returned to work with Mussro's permission. The work

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<sup>6</sup>We agree with the Trial Examiner that Mussro's denials of the remarks and conduct attributed to him, and his claim that he took the serial numbers in pursuance of a hobby were patently incredible. Nor does the fact that the Crowell & Larson employees thereafter operated the Crook equipment, and that Mussro never did return to shut down the operation, prove that he did not threaten to do so, as the Respondent contends.



stoppage had lasted about an hour after the end of the luncheon recess, and the employer deducted an hour's wages from each of the men. This is hardly consistent with the Respondent's arguments that the men were delayed in returning to work because their foreman failed to direct them to do so, or because they were awaiting delivery of equipment, or because of the other equally unpersuasive reasons, unconnected with Mussro's presence, which were advanced by the Respondent.

The Respondent states in its brief, as to Mussro's activity: "When viewed unemotionally, this incident at best is merely a sporadic momentary failure to return to work." But the determination as to whether a union has violated the Act by inducing a proscribed work stoppage does not depend upon the duration of the stoppage. As Mussro's conduct was designed to cause a concerted refusal by the Crowell & Larson employees to work while Neuenchwander was present, the extent to which this purpose met with success is immaterial.<sup>7</sup>

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<sup>7</sup>See *Associated Musicians of Greater New York*, 110 NLRB 2166, enf'd. *NLRB v. Associated Musicians*, Nov. 3, 1955 (C.A. 2) 37 LRRM 2041. In *Local 11, United Brotherhood of Carpenters & Joiners of America, AFL, et al. (General Millwork Corporation)*, 113 NLRB No. 124, p. 4, the Board stated: "To constitute inducement in the statutory sense, it is not necessary that the union's appeal succeed in producing a strike or concerted refusal to work; it is enough that the appeal was made with that purpose."

3. The Trial Examiner found, and we agree, that the Respondent, by inducing and encouraging employees of McCammon-Wunderlich Company to refuse to perform services for their employer with an object of forcing or requiring such employer to cease doing business with Shepherd, violated Section 8 (b) (4) (A) of the Act.

The Respondent began picketing the Shepherd premises on May 23, 1955. On May 24, one Sterling and an unidentified helper, employees of Shepherd, went to a job site of McCammon to repair some equipment which had been obtained from Shepherd. They came in a truck bearing Shepherd's name. Hunter,<sup>8</sup> the Respondent's job steward on this project, asked Sterling if the Shepherd shop was being picketed, and Sterling admitted that it was. Hunter then asked Sterling if he intended to do some work there. When Sterling replied that he did, Hunter threatened to close the job down while Sterling was working there. Hunter proceeded to drive about the project giving the "thumbs up" signal to cease work. The equipment operators stopped working and congregated at a central point. According to the uncontradicted testimony of Waggoner, the superintendent of the project, which we

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<sup>8</sup>On the basis of Sterling's description of the individual he referred to as "Hunt" and the testimony of other witnesses about this incident, we find that "Hunt" was a designation of Hunter. We also find that Hunter's conduct with relation to the Shepherd employees was within the scope of his general authority as a union steward.

credit, upon being informed about the work stoppage, he directed Sterling to leave, and then told Hunter that Sterling was leaving and Hunter could tell the men to go back to work. Work was resumed upon Sterling's departure. Estimates of the length of the work stoppage varied from 20 to 45 minutes.

Like the Trial Examiner, we find no merit in the Respondent's contention that the work stoppage was a voluntary spontaneous action engaged in by the operators without any inducement from the Respondent and, in fact, without even its knowledge. Hunter did not testify. Two employees called by the Respondent, Luther and Thomason, testified that before work began at 4:00 a.m. on the day of the Shepherd truck incident, a number of the equipment operators met and agreed to stop working if a nonunion man came on the job, or as Thomason put it on cross-examination, "if the Shepherd truck came on the job." These two witnesses were vague and contradictory in their testimony about the meeting. However, they were consistent in asserting that Hunter, who worked the same shift and generally arrived 10 or 15 minutes before work began, was not present, that they did not know where he was, and that no other union representative took part in the meeting. Both testified also that when the Shepherd truck appeared, various operators drove around giving the thumbs up signal. Again there was vagueness and contradiction in their testimony as to the identity of the operators who did so, but the same unanimity that Hunter was not in sight.

Under all the circumstances and on the entire record, including the fact that the Trial Examiner stated that he had "serious doubts concerning the veracity of this testimony," we do not credit the testimony of Luther and Thomason.

As the Trial Examiner also found, other indications that Hunter caused an unlawful work stoppage are shown by the fact that Foreman Green heard Hunter direct a crane operator to stop working while the Shepherd truck was there or risk a \$100 fine. When Green asked Hunter the reason for this action, Hunter told him there was a Shepherd truck on the job and so the job was shut down. When the crane operator asked Green what he should do, Green advised him to comply. The Respondent maintains that the crane operator's work stoppage was therefore attributable to Green rather than to the Respondent. It is obvious, however, that the foreman's permission to the operator to comply with Hunter's demand rather than subject himself to a fine was not the real cause of the operator's work stoppage and cannot absolve the Respondent of liability for Hunter's threats.

Finally, the Trial Examiner found, in connection with this Shepherd incident, that Waggoner called Seymour, a representative of the Respondent, at the union office, and protested the work stoppage. Seymour told him that as there was a picket line at the Shepherd shop, Shepherd employees would not be permitted to work at the project. Upon inquiry by Waggoner, Seymour stated that Shep-

herd employees could not do even the work called for by warranties on the equipment obtained from Shepherd, and that Waggoner could not purchase parts from Shepherd. Seymour did not testify. The Respondent contends that Seymour was not adequately identified and was not shown to be an agent of the Respondent. Waggoner testified, however, that he called the union office and asked for Seymour, and that when a man who identified himself as Seymour came to the telephone, Waggoner recognized his voice from prior conversations. Furthermore, Seymour is identified in the record as personal representative to Bronson, business manager of the Respondent.

In conclusion, we are convinced, from the entire record, that the Respondent caused the McCammon employees to engage in a prohibited work stoppage in order to force McCammon to stop doing business with Shepherd. As we found above, the Respondent engaged in similar unlawful activity, involving employees of Crowell & Larson, directed against Crook. The complaint alleged, and the Trial Examiner found, that certain other acts of the Respondent, involving other employers than McCammon and Crowell & Larson, also constituted secondary boycotts in violation of the Act. As we would issue the same kind of restraining order against the Respondent whether it was predicated on one or more violations of this type, we are of the opinion that "no good purpose could be served



in considering each incident separately with a view of determining whether it constitutes a violation.”<sup>9</sup>

According, without passing upon the other incidents discussed in the Intermediate Report, we find that the Respondent violated Section 8 (b) (4) (A) as to both of the employers herein by inducing and encouraging employees of Crowell & Larson to refuse to perform services for their employer with an object of forcing or requiring such employer to cease doing business with Crook, and by inducing and encouraging employees of McCammon-Wunderlich Company to refuse to perform services for their employer with an object of forcing or requiring such employer to cease doing business with Shepherd.

C. The Violations of Section 8 (b) (4) (B)  
of the Act

4. The Trial Examiner found, and we agree, that the Respondent, in inducing and encouraging employees of Crowell & Larson to refuse to perform

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<sup>9</sup>Joliet Contractors Assn. v. NLRB, 202 F. 2d 606 (C.A. 7, 1953), cert. denied 346 U. S. 824.

The Respondent states in its brief, in connection with the McCammon incident: “Even though a finding of a technical violation might be made, which we do not concede, standing alone as it now does, it is not sufficient to warrant a finding of a violation of 8(b) (4).” We are satisfied, however, that the violation we have found based upon the McCammon incident was not merely a technical one. Furthermore, as set forth above, such a violation warrants the issuance of an order whether or not it stands alone.

services for their employer, had as an objective forcing or requiring Crook to bargain with it as the representative of the Crook employees without having been certified as such representative, in violation of Section 8 (b) (4) (B) of the Act.

The Respondent began picketing the Crook premises about February 17, 1955. The pickets were withdrawn when Crook entered into a consent election agreement with the Respondent on March 3. The employees voted against representation by the Respondent in the ensuing election. Thereafter the picketing was resumed and has been conducted intermittently since then.

On May 11, 1955, the Respondent sent a letter to a number of employers in the area, including Crook. This letter was signed jointly by representatives of the Respondent and of another union. It was signed for the Respondent by Seymour, personal representative, on behalf of Business Manager Bronson. The letter was as follows:

During the past several months, we have at various times, attempted to arrange a meeting with the Equipment Distributors in Southern California, for the purpose of discussing an Agreement between your firm and the below signatory Unions.

The Operating Engineers, in handling the procedures, have been advised by Mr. W. W. Shepherd of the Shepherd Machinery Company, that he, Mr. Shepherd, had been delegated by the various firms, to speak for them.



In discussing this issue with Mr. Shepherd, it was evident that we could not proceed and enter into negotiations.

We are, therefore, requesting that a representative of your Company be present May 16, 1955, at 10:00 a.m. at the Operating Engineers' Building, 2323 West 8th Street, Los Angeles, California, for the purpose of entering into negotiations with the Unions involved, to conclude a workable Agreement. The Unions will have a proposal to offer at this meeting.

On May 16, Crook filed its petition which was incorporated with several other employer petitions in the Casey-Metcalf case.<sup>10</sup> On May 17, the Respondent wrote to the Board in connection with the petitions in Casey-Metcalf, that it did not claim to represent a majority of the employees in any of the units set forth in those petitions. About a week or 10 days later, however, Seymour called W. G. Crook, principal stockholder of Crook, and, according to the latter's uncontradicted testimony, requested an appointment, stating that "he would like to make an agreement with us and a contract as to our labor situation."

The Respondent repeated, at the hearing and in its brief, its disavowal of any claim to be the bargaining representative of the Crook employees. It sought to justify the continued picketing of the Crook premises on the grounds that it was in pro-

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<sup>10</sup>See footnote 3 above.

test of (1) an alleged discriminatory discharge of ten employees, and (2) the performance by non-union employees of work involving the maintenance and repair of equipment operated by the Respondent's members, as jurisdiction over such work had been awarded to the Respondent by the American Federation of Labor.

The testimony of credited witnesses establishes that the ten employees were laid off, are being called back to work as business operations warrant, and were permitted to vote in the consent election without challenge. Moreover, although the layoffs occurred on February 15, the Respondent ceased picketing after the consent election agreement was entered into on March 3, and resumed after the election results were announced. It is evident therefore that the picketing was not directed against the layoffs but was designed to obtain recognition despite the adverse election results. We, therefore, find no merit in the Respondent's first ground for maintaining the picket line. We likewise find no merit in the second ground as the Respondent's actions in some of the situations discussed in the Intermediate Report<sup>11</sup> did not involve the maintenance or repair of equipment operated by its members. Moreover an intra-union ruling cannot constitute a defense to unlawful conduct,<sup>12</sup> nor can

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<sup>11</sup>Although we have not passed upon the legal effect of these incidents, we find that they occurred as set forth in the Intermediate Report.

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<sup>12</sup>Sub Grade Engineering Company, 93 NLRB 406, 407.

secondary boycott activity be justified on the ground that the union involved had a motive which would have been lawful if the activity had been lawful.<sup>13</sup>

Accordingly, we find that the Respondent's repeated disclaimers of representative status were not made in good faith in view of its picketing and other inconsistent conduct detailed above, manifesting a desire to gain representative status without Board certification.<sup>14</sup> We find, therefore, upon the entire record, that an objective of the Respondent's conduct was to force or require Crook to recognize it as the collective bargaining representative of the Crook employees without its having been selected as such representative, in violation of Section 8 (b) (4) (B) of the Act.

5. The Trial Examiner found, and we agree, that the Respondent, in inducing and encouraging employees of McCammon-Wunderlich Company to refuse to perform services for their employer, had as an objective forcing or requiring Shepherd to bargain with it as the representative of the Shepherd employees without having been certified as

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<sup>13</sup>Washington-Oregon Shingle Weavers' District Council, et al. (Sound Shingle Co.), 101 NLRB 1159, enf'd. NLRB v. Shingle Weavers' Council, 211 F. 2d 149 (C.A. 9, 1954).

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<sup>14</sup>Francis Plating Co., 109 NLRB 35; Petrie's, 108 NLRB 1318; Pasco-Kennewick Building Trades Council (Cisco Construction Co.), 111 NLRB 1255.

such representative, in violation of Section 8 (b) (4) (B) of the Act.

In about January, 1955, a union representative got in touch with Montgomery, the assistant general manager of Shepherd, and, according to the latter's uncontradicted testimony, stated "that the union would like to establish a contract with the Shepherd people \* \* \*" During March and April, Bronson and Seymour approached Montgomery several times to discuss a contract. At one point they submitted a contract in effect at another similar operation, and requested that Shepherd enter into such a contract. Montgomery suggested that, as the Respondent had not established that it represented the Shepherd employees, it should seek a Board election. The representatives of the Respondent replied that no election was desired.

Shepherd filed a representation petition with the Board on April 8, but it was dismissed by the Regional Director following the Respondent's filing on April 15 of a disclaimer of representative interest. Thereafter the Respondent distributed a notice to the Shepherd employees requesting them to attend a meeting to discuss representation, and Shepherd received the Respondent's May 11 written request, set forth above, to meet and discuss an agreement. Shepherd considered these actions inconsistent with the Respondent's disclaimer, and again filed a petition on May 15 (21-RM-350), which was one of the petitions filed in the Casey-Metcalf case, *supra*. On May 17 the Respondent

filed with the Board the disclaimer referred to above in connection with Crook. On May 20, because of the Respondent's disclaimer, Shepherd withdrew its petition, and the withdrawal was approved on June 15.

After Montgomery took the position that a Board election should be sought, Bronson and Seymour discontinued their negotiations with Shepherd. The Respondent began picketing Shepherd about May 23, picketed continuously until a few weeks before the hearing, and has picketed intermittently since then.

The Respondent maintains that it was picketing Shepherd to protect its grant of jurisdiction over work which was being done by nonunion Shepherd employees. We found this same contention without merit as to the Crook picketing, and are similarly convinced, upon the entire record, that it was not the real reason for picketing Shepherd. Accordingly, we are convinced, and find, that the Respondent's disclaimers are of no effect in view of its inconsistent actions. We further find, upon the entire record, that one of the Respondent's objectives was to force or require Shepherd to recognize it as the collective bargaining representative of the Shepherd employees without its having been selected as such representative, in violation of Section 8 (b) (4) (B) of the Act.<sup>15</sup>

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<sup>15</sup>We do not adopt the Trial Examiner's limitation that this was an objective of the Respondent "at least until and on May 11, 1955," but find that it has been a continuing objective of the Respondent.



### Order

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, International Union of Operating Engineers, Local 12, Los Angeles, California, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Inducing and encouraging the employees of Crowell & Larson, or any other employer, to engage in a strike or concerted refusal in the course of their employment to perform any services for their employer where an object thereof is to force or require Crowell & Larson, or any other employer, to cease doing business with Crook Company, or to force or require Crook Company to recognize or bargain with the above-named labor organization as the collective bargaining representative of its employees, unless and until said labor organization has been certified as such bargaining representative in accordance with the provisions of Section 9 of the Act.

(b) Inducing and encouraging the employees of McCammon-Wunderlich Company, or any other employer, to engage in a strike or concerted refusal in the course of their employment to perform any services for their employer where an object thereof is to force or require McCammon-Wunderlich Com-

pany, or any other employer, to cease doing business with Shepherd Machinery Company, or to force or require Shepherd Machinery Company to recognize or bargain with the above-named labor organization as the collective bargaining representative of its employees unless and until said labor organization has been certified as such bargaining representative in accordance with the provisions of Section 9 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Post at its business office in Los Angeles, California, copies of the notice attached hereto as Appendix A.<sup>16</sup> Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the official representative of the Respondent, be posted by it immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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<sup>16</sup>In the event this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals Enforcing an Order."



(b) Notify the Regional Director for the Twenty-first Region, in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington D. C., January 9, 1956.

[Seal]                    NATIONAL LABOR  
                             RELATIONS BOARD,  
                             BOYD LEEDOM,  
                             Chairman,  
                             IVAR H. PETERSON,  
                             Member,  
                             PHILIP RAY RODGERS,  
                             Member.

## Appendix A

### Notice

To All Members of International Union  
Of Operating Engineers, Local 12

Pursuant To  
A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not induce or encourage the employees of Crowell & Larson, or any other employer, to engage in a strike or concerted refusal in the course of their employment to perform any services for their employer where an object thereof is to force or re-

quire Crowell & Larson, or any other employer, to cease doing business with Crook Company, or to force or require Crook Company to recognize or bargain with us as the collective bargaining representative of its employees, unless and until we have been certified as such bargaining representative in accordance with the provisions of Section 9 of the National Labor Relations Act.

We Will Not induce or encourage the employees of McCammon-Wunderlich Company, or any other employer, to engage in a strike or concerted refusal in the course of their employment to perform any services for their employer where an object thereof is to force or require McCammon-Wunderlich Company, or any other employer, to cease doing business with Shepherd Machinery Company, or to force or require Shepherd Machinery Company to recognize or bargain with us as the collective bargaining representative of its employees, unless and until we have been certified as such bargaining representative in accordance with the provisions of Section 9 of the National Labor Relations Act.

Dated .....

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 12

(Labor Organization.)

By .....

(Representative.) (Title.)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Before the National Labor Relations Board  
Twenty-First Region

Case Nos. 21-CC-198 and 21-CC-200

In the Matter of:

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL No. 12,

and

MRS. EDWIN SELVIN.

PROCEEDINGS

Pursuant to notice, the above-entitled matter  
came on for hearing at 1:30 o'clock p.m.

Before: Wallace E. Royster, Trial Examiner.

Appearances:

ERNEST L. HEIMANN,

Appearing on Behalf of the General Coun-  
sel of the National Labor Relations  
Board.

JAMES M. NICOSON,

DAVID SOKOL,

Appearing on Behalf of International  
Union of Operating Engineers.

MRS. EDWIN SELVIN,

Appearing on Behalf of Crook Company  
and Shepherd Machinery Company.

(The documents heretofore marked General Counsel's Exhibits Nos. 1-A to 1-I, inclusive, for identification, were received in [5\*] evidence.)

\* \* \*

### RALPH STERLING

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Heimann:

\* \* \*

Q. By whom are you employed, Mr. Sterling?

A. Shepherd Machinery Company.

Q. And what is your job there?

A. I am a field mechanic.

Q. And how long have you been so employed?

A. Going on nine years.

Q. I see. Now, on or about May 24th, were you sent out to a job in Stone Canyon?      A. I was.

Mr. Nicoson: Just a minute. I move to strike that answer for the purpose of interposing an objection.

I object to any and all testimony or evidence with respect to this or any other evidence, with respect to so-called McCammon-Wunderlich, for reason there is no charge on file with the board or before the Board, or before the Trial Examiner, [120] which sustains any allegation of this complaint.

\* \* \*

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Ralph Sterling.)

Q. (By Mr. Heimann): All right, what did you go out there [121] for?

\* \* \*

The Witness: I was sent out to fix a brake band on a big tractor.

Q. (By Mr. Heimann): Who sent you out?

A. Shepherd Machinery.

\* \* \*

Q. (By Mr. Heimann): All right, you were supposed to put brake bands into a tractor?

A. That is right.

Q. And, did you go out there? A. I did.

Q. And, when did you arrive out there?

A. I would say somewhere between 9:00 and 9:30, and——

Q. How did you go out there?

A. I went out in the company pick-up.

Q. Was the name of the company appearing on the pick-up? A. It did.

Q. Did you talk to anyone there?

A. Yes; I did. [122]

Q. To whom did you talk?

A. I talked to Mr. Wagonner.

Q. Who is Mr. Wagonner?

A. The gentleman sitting over there; the Superintendent on Stone Canyon.

\* \* \*

Q. And then what did you do?

A. Well, I drove out there. When I get there,

(Testimony of Ralph Sterling.)

there is a guy on Number 12 Patrol, drives up and asked me if I was going to work out there.

Q. All right, describe that guy?

Mr. Nicoson: Pardon me. Number 12, what?

The Witness: Patrol, that is the motor grader.

Mr. Nicoson: You say he drove up?

The Witness: Yes.

Q. (By Mr. Heimann): You say he drove up on his motor grader? A. He did.

Q. All right. Do you know the name of that man? A. Well, his name is Hunt. [123]

\* \* \*

Q. Will you describe the man?

A. I would say he weighed around one hundred and eighty, seventy-five to one hundred and eighty. He has a sort of sandy complexion.

Q. About how tall?

A. I would say around five, nine.

Q. About how old?

A. I would say between thirty and forty.

Q. And what color of hair, if you remember?

A. Sort of indo-red, sort of sandy.

Q. Did you say dusty, or sort of?

A. It is not what you call a red. Sort of in between a red and a brunette, I would say.

Q. I see. All right, was anybody else present when he talked to you?

A. Well, there was a kid with me. I took a helper. He was standing over by the pick-up.

Q. What was the name of the kid?



(Testimony of Ralph Sterling.)

A. Ed, is all I know. [124]

Q. Pardon?

A. Ed. All I know is his first name.

Q. He is another Shepherd employee?

A. That is right.

Q. All right; now, what did Mr. Hunter say to you, what did you say to him?

A. He asked me if I was going to work out there. I told him I was. He said, "If you do, I will close the job down. I got authority to do so." I told him I was on a warranty job. I told him that Mr. Wagonner would have to come down and ask me to leave or I would have to go ahead with the procedure.

\* \* \*

Q. (By Mr. Heimann): Did he say anything about Shepherd?

A. Yes; he asked me if there was a picket line around Shepherd. [125]

Q. What did you answer?

A. I told him there was.

Q. All right, so what did you do then; what did he do then?

A. I walked over to Bob Brussel, Master Mechanic on Stone Canyon, I told him what took place.

\* \* \*

The Witness: I told him what the man told me he was going to do. He was going to close the job down.

Q. What did he do about it?



(Testimony of Ralph Sterling.)

A. He asked me to stand by until he went up to the office to see Mr. Wagonner in the meantime. Then the man drove around and closed the job down.

Q. How did he close the job down?

A. He drove around on Number twelve sticking up his thumbs; it would be like this [126] (indicating).

\* \* \*

Q. (By Mr. Heimann): Mr. Sterling, are you a member of any union? A. I am.

Q. What union? A. Local 3, Engineers.

Q. Do you have frequent occasions to go out on construction jobs? A. Can I have that again?

Q. Do you have occasion to go out on construction jobs frequently?

A. Well, I followed construction jobs for quite a few years; I have.

Q. I see. Have you ever seen that signal, thumbs up, used before? A. I have.

Q. Once, or more than once?

A. More than once.

Q. What was the result of that signal?

A. You pull in. The signal of that is quitting time, pull in for lunch, or anytime they want you to pull in.

Q. Now, what happened after that thumbs signal?

A. Why, the operators started to pull in and parking their equipment.

Q. All of them you saw? [127]

(Testimony of Ralph Sterling.)

A. All I could see. [128]

\* \* \*

Q. (By Mr. Heimann): All right. Now, did you have any further conversation with that Mr. Hunt, as you recall?

A. I did after Mr. Wagonner came down and asked me to leave the job.

\* \* \*

Q. All right then, go on.

A. Mr. Bothel went up and talked to Mr. Wagonner. Mr. Wagonner came down and asked me to pull off the job so the men could go back to work, until he could contact the union and find out what it was all about.

I had a brake band that I brought up for them that belonged to them.

Q. Was that for the tractor you were supposed to repair? A. No; it was not.

Q. It was another brake band?

A. Yes. I started to leave it with Mr. Bothel, he asked me to. Mr. Hunt comes up and tells him he can't accept the part. [129]

\* \* \*

Q. (By Mr. Heimann): All right.

A. I asked him why I couldn't leave the band; the band that belonged to them.

Q. To whom?

A. To McCammon-Wunderlich. He said he didn't know that. So, he went ahead and allowed me to leave the band.

(Testimony of Ralph Sterling.)

Q. All right. And, did you leave then?

A. I did.

Q. Did you see whether the job was running again, when you left?

A. Well, they didn't start up until I got up on top of the hill. I looked back and noticed they had started pulling out again. [130]

\* \* \*

Q. Did Mr. Hunt say anything to you at any time as to when the work will go on. When the operators will continue working?

A. When I left; yes. [131]

Q. Just what did he say?

A. He said, "When you get off the job, we will go back to work."

Q. All right. And, when did he tell you that?

A. He told me that when we had to talk about the brake band.

Q. I see.

Mr. Heimann: No further questions.

### Cross-Examination

By Mr. Nicoson: [132]

\* \* \*

Q. Mr. Wagonner? What did Mr. Wagonner tell you?

A. Mr. Wagonner asked me to pull off the job so the operators would go back to work, so that he could find out what it was all about.

Q. How much time did all this take? [141]

(Testimony of Ralph Sterling.)

A. I would say a period of twenty or thirty minutes.

Q. So that, when Mr. Wagonner told you to drive off the job, you went off?

A. That is right.

\* \* \*

Q. (By Mr. Nicoson): Didn't you say you told Mr. Hunt you were going to stay on the job until Mr. Wagonner told you to [142] get off?

A. I told him I would have to stay until Mr. Wagonner asked me to leave.

Q. So you did stay there until Mr. Wagonner asked you to leave? A. I did.

Q. When Mr. Wagonner asked you to leave, you left? A. I did. [143]

\* \* \*

### Recross Examination

By Mr. Nicoson:

Q. Mr. Sterling, will you describe the truck that you were driving that morning?

Trial Examiner: Could you speak a little louder?

Q. (By Mr. Nicoson): I am sorry. Mr. Sterling, will you please describe the truck that you drove that morning?

A. I will. It is a Chevrolet, three-quarter ton pick-up, painted yellow. It had a big sign on each side of the Shepherd Tractor and Equipment Company. [146]

\* \* \*

## JIMMY C. GREEN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Heimann: [151]

\* \* \*

Q. What is your occupation, Mr. Green?

A. Carpenter foreman.

\* \* \*

Q. And, for whom do you work?

A. McCammon-Wunderlich Company.

Q. And where do you work?

A. Stone Canyon Reservoir.

Q. And was that your occupation in May 1955?

A. It was.

Q. Now, do you remember an occasion in May, 1955, when a Shepherd's truck came out on the Stone Canyon Job?      A. Yes.

Q. And, how did you find out about it?

A. Well, I had a rig operating, crane was operating, setting a thimble.

Q. What is a thimble?

A. It is a gate thimble, and outlet structure construction out there. [152]

\* \* \*

Q. (By Mr. Heimann): All right. It is a gate thimble used in construction of outlet structures building on the job. I see. What is the purpose of the thimble?

A. To control the supply of waters to main lines out of the reservoir.

(Testimony of Jimmy C. Green.)

Q. Now, who was doing that?

A. My foreman was having it done. I was doing it with a Link-Belt Crane.

Q. Were you operating the crane? A. No.

Q. Who was operating the crane?

A. The operator's name, I believe, was Tru-Yound.

Q. I see. That was another employee of McCammon-Wunderlich?

A. He was employed by Valley Crane Service. We had the crane on rental service.

Q. I see. Now, would you go on and tell us how you found out about the Shepherd truck being there?

A. Well, I was coming across the fill and I saw a crane, Number 12 crane, stopped. They were talking to the operator on the rig crane that [153] stopped.

\* \* \*

Q. (By Mr. Heimann): But you said the operator was on the ground?

A. The operator of the crane was on the ground.

Q. What was he doing at that time?

A. He was talking to Red Hunter.

Q. Now, who is Red Hunter?

A. At that time, he was steward on the job.

Q. How did you know he was steward?

A. He was wearing the button.

Q. What kind of a button?

A. A steward button on his hat.

Q. I see. What union? A. Local 12.

Q. All right. Now, who was present during that conversation? A. No one. What conversation?



(Testimony of Jimmy C. Green.)

Q. Between Red Hunter and the crane operator?

A. I don't know of any one.

Q. Were you there?

A. I came up about the time they were [154] talking.

\* \* \*

Q. I see. Now, what did Mr. Hunter say to the crane operator; what did he say to you; what did the crane operator say to him?

\* \* \*

The Witness: I asked the operator why they were shut down. Hunter said that a Shepherd truck was on the job and the job was shut down. He told the operator of the other crane to drop his load and swing the boom out, or he would be fined a hundred dollars. The operator asked me what to do. And, I told him to do as he was told.

Q. (By Mr. Heimann): About what time of the day was that?

A. I would say it was between nine and [155] ten.

\* \* \*

Q. Do you remember whether you said anything else to Hunter?

A. The only thing was, I asked him why. He said, there was a Shepherd truck on the job and that they were shut down.

Q. Anything else that you remember?

A. I believe he asked me what I was going to do, and, I told him I was going to see Mr. Wagonner.

(Testimony of Jimmy C. Green.)

Q. I see. Anything else you remember?

A. Nothing other than, I told the crane operator to set the load down and swing out as he was told.

\* \* \*

Q. Now, did you see what Mr. Hunter did then?

A. He got on his blade and went across the fill.

Q. And, what did he do?

A. He was giving other operators the thumbs up signal to shut down.

Q. I see. And, did they shut down?

A. Yes.

Q. And, about how many pieces of equipment shut down?

A. I don't know, I would say they have around thirty pieces of equipment operating on the job at that time. [156]

Q. Did you see whether Red Hunter went around to all of them? A. No, I didn't.

Q. About how many did you see that he went around to? A. Oh, I would say five or six.

Q. Would you tell us about how long the shut down lasted?

A. I would say thirty to forty-five minutes. [157]

\* \* \*

### Cross-Examination

By Mr. Nicoson: [158]

\* \* \*

Q. And, was this the only employee of the Valley Crane Service that was on the job, as far as you know? A. No, there was an oiler on it.

(Testimony of Jimmy C. Green.)

Q. Pardon?

A. There was an oiler on it, on the crane.

Q. There was two of them there? A. Yes.

Q. They took instructions from you as to where to work, when to work, how to work, and so on?

A. That is right.

Q. So, you would tell them where to make lifts?

A. Yes.

Q. What to do and so forth? A. Yes.

Q. How long had they been working with you before this particular day?

A. I don't know the actual time. I would say, two months. [161]

\* \* \*

### Redirect Examination

By Mr. Heimann:

Q. Do you know whom the equipment operators were employed? That is—let me ask you this first? You said, Red Hunter was giving the thumbs up signal to about six or eight equipment operators?

A. That is right.

Q. Do you know whose employees they were?

A. They were McCammon-Wunderlich employees.

Q. You said that Mr. McCammon-Wunderlich rented the crane together with the operators?

A. It is operated and maintained.

Q. Pardon?

A. Operated and maintained by Valley Crane Service.

(Testimony of Jimmy C. Green.)

Q. Yes. And you happen to know who paid the wages of the crane operator?

A. I would say they operate and maintain it, I would assume Valley Crane pays it.

Q. Don't assume anything.

A. Valley Crane pays, I would say. [166]

\* \* \*

CLINT E. WAGGONER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Heimann:

\* \* \*

Q. What is your occupation?

A. Superintendent.

Q. And where? A. Stone Canyon Project.

Q. And for whom? [167]

A. McCammon-Wunderlich.

Q. And, for how long?

A. That date, I don't have. I am sorry. I don't have it without looking at the records.

Q. Well, approximately?

A. I believe it was in December, when I was appointed Superintendent.

Q. About December of 1954?

A. Yes, somewhere there.

Q. On or about May 23rd, were you notified of any shut down on the Stone Canyon job?

(Testimony of Clint E. Waggoner.)

Mr. Nicoson: May that be answered yes or no.

The Witness: Yes.

Q. (By Mr. Heimann): And, who notified you?

\* \* \*

The Witness: Mr. Green. Jimmy Green and Bob Bothel.

Q. (By Mr. Heimann): And, when you were so notified, what did you do?

A. Proceeded to the job. [168]

\* \* \*

Q. And what did you do there?

A. I immediately contacted Shepherd's mechanics and told them to leave so we could proceed with the job, as I understood that was the trouble.

Q. How did you understand that?

A. Being told that Shepherd was on the job.

\* \* \*

Q. (By Mr. Heimann): So, then you told the Shepherd mechanics to leave the job, right?

A. Yes. [169]

Q. Did you talk to somebody else?

A. Next, I talked to Red Hunter.

Q. All right. Who is Red Hunter?

A. At that time, he was on blade operating for McCammon-Wunderlich Company.

Q. Did he have any position with the union?

A. He was the steward.

Q. Have you had previous dealings with him in the capacity of his being steward? A. Yes.

Q. More than once? A. More than once.

(Testimony of Clint E. Waggoner.)

Q. And, what did you say to Red Hunter?

A. That he could send the boys back to work, that I had told Shepherd's people to leave the job.

Q. All right. Did Hunter say anything to you?

A. Not that I recall.

Q. What did he do?

A. He proceeded to start the boys out again on their equipment.

Q. And, they started out again, right?

A. That is right.

Q. Now, after that, did you make a phone call to Local 12?      A. I did.

Q. And did you dial the number of Local 12, or did somebody [170] dial it for you?

A. I had it dialed by the office manager.

Q. I see. And who answered the phone?

A. I asked for Mr. Seymour.

\* \* \*

Q. Did Mr. Seymour come to the phone?

A. In some short time, yes.

Q. Had you talked with Mr. Seymour on the telephone before?      A. Numerous times.

Q. You recognized his voice over the telephone?

A. Yes, I do.

Q. What did you tell Mr. Seymour, what did he tell you?

A. I told him I thought he was being unfair to me on that job.

Q. What did he tell you?

A. I—he didn't. I don't believe he understood the thing as it was that morning.



(Testimony of Clint E. Waggoner.)

Q. Well, what did he say? [171]

A. Those words, I don't have that answer to that.

Q. Well, approximately. I don't mean the exact words?

A. I believe he asked me, did I know that Shepherd people were being picketed. [172]

\* \* \*

Q. Now, does that refresh your recollection as to anything [173] else that Mr. Seymour said in the telephone conversation on the date of the shut down?

A. Only that we could not have Shepherd people on the job until such a time that that thing was straightened out with the Shepherd Equipment.

Q. All right. Does it refresh your recollection as to anything additional that you said?

A. I asked him about the warranties on the equipment, all being bought from Shepherd Equipment.

Q. What did he say to that?

A. That we could not do it.

Q. Does it refresh your recollection as to anything he said about parts?

A. I inquired about parts and he was willing to recommend places where we could buy parts.

Q. Did he recommend such places? A. No.

Q. I see. Did you ask him whether you could buy parts from Shepherd? A. Yes.

Q. What was his answer?

A. We could not.

Q. Now, by the way, you mentioned something about warranty; would you tell us what that warranty was?

(Testimony of Clint E. Waggoner.)

A. That is a thousand hours on tractors with 20's and 21's, [174] and on Number 12 Auto Patrols.

Q. Now, what does thousand hours mean?

A. What is the obligation; thousand hours operating time on that particular piece of equipment.

Q. During the first thousand hours of operating time, Shepherd was to perform service on the equipment?

A. That is right. [175]

\* \* \*

Q. Does that statement refresh your recollection whether you had any conversation with Mr. Hunter at any subsequent time, regarding the shut down?

A. Later on that same shift, I would say.

Q. I see. What did you tell Mr. Hunter then? What did he tell you?

A. I told Mr. Hunter, Red as we know him, I figured he done wrong in pulling the job without notifying me or my office.

Q. What did Mr. Hunter say to that, if anything?

A. No answer.

Q. No answer?

A. No answer.

\* \* \*

### Cross-Examination

By Mr. Nicoson:

Q. Mr. Waggoner, what time of day was it that you talked with Mr. Seymour on the day the Shepherd man was out there?

A. I didn't keep that time. [176]

\* \* \*

(Testimony of Clint E. Waggoner.)

Q. What was the first thing that you said to Mr. Seymour when he came on the telephone?

A. I believe I asked him if he knew that our job had been shut down.

Q. What did he say?

A. At that time, he didn't.

Q. He did not know the job had been shut down?

A. No.

Q. Go ahead, what else did he say, or did you say?

A. I don't have the rest of that conversation.

Q. You don't remember the rest of it?

A. No. [177]

\* \* \*

Q. Did you tell him the job had started up again?

A. I did.

Q. Did you tell him how long the job had been down? A. Approximately.

Q. What did you tell him?

A. I told him we were shut down approximately thirty minutes.

Q. About thirty minutes?

A. I guess that is about the time the job was shut down.

\* \* \*

Q. I think you just testified, in answer to my question, the job was down about thirty minutes?

A. Approximately.

Q. Did anybody keep a stop-watch on it and time it? A. Not that I know of.

Q. As far as you know, it could have been twenty minutes?

(Testimony of Clint E. Waggoner.)

A. It could have been twenty, or it could have been forty-five, one way or the other.

Q. You have no way of knowing exactly how long the job was down?

A. Approximately thirty minutes.

Q. All right. Now, when you told Mr. Hunter to put the men back to work, he did, and they did, didn't they? [178]

(No response.)

Q. Is that right?

A. Yes, he put them back to work.

Q. As soon as you gave the word, the men went back to work?

A. As soon as I told him the Shepherd men were leaving the job.

Q. And went back to work?

A. That is right. [179]

\* \* \*

## FRED NEUENSCHWANDER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

### Direct Examination

By Mr. Heimann:

\* \* \*

Q. By whom are you employed?

A. By Crook Company.

Q. What is your occupation?

A. I am a mechanic.

Q. How long have you been so employed? [180]

(Testimony of Fred Neuenschwander.)

A. About fifteen years.

Q. Now, on or about March 30th, did you go out to a job in Glendora?      A. I did.

Q. And, where was that job located?

A. Well, Colorado Avenue and Pasadena Avenue in Glendora, at the intersection.

Q. Do you know who was the contractor on that job?      A. Yes, I do. It was Crowell & Larson.

Q. All right. For what purpose did you go out there?

A. Well, I had to make some adjustments on a couple of new machines that were delivered the day before.

Q. What kind of machines were they?

A. Letourneau-Westinghouse Tournapulls, dirt-moving machines.

Q. How did you go out there?

A. Well, the Crook Company pick-up.

Q. Did it have a sign on it?

A. Yes, it did.

Q. It said Crook Company, or something like that?      A. Yes.

Q. Now, when did you get there, approximately?

A. Well, approximately a little after 11:30. I should say around 11:45.

Q. And, were there any Crowell & Larson employees on that job? [181]

\* \* \*

A. Yes, there were; they were eating lunch.

Q. They were stopped?

(Testimony of Fred Neuenschwander.)

A. Stopped. Shut down and eating lunch.

Q. Did you talk to any of them?

A. I asked them which machine was giving the trouble. They told me which one it was. Pointed out to me which machine.

Q. What did you do then?

A. Well, I got my tools out of the pick-up and went over to work on the machine.

\* \* \*

Q. All right. Now, when you started working there, what happened while you were working, if anything?

A. Well, I should say, I worked about fifteen or twenty minutes maybe, on the machine. Then, Mr. Joe Mussro, as I know him, came up and asked me my name; who I worked for; who sent me out there.

I answered his questions.

Q. Did he say who he was? [182]

A. Yes. He introduced himself.

Q. Did he say what his job was?

A. No, he didn't exactly say what his job was.

Q. Whom he worked for?

A. Yes. He said that he was with Local 12. I met him before, down at the shop. I knew what his business was.

\* \* \*

Q. All right. Did he say anything else to you?

A. Well, then he said, "Well, I think you had better leave the job." And, at that point, he said, "Well, you can go ahead and work, but we are not



(Testimony of Fred Neuenschwander.)

going to work." He said that pretty loud so all the the men around there could hear it.

Mr. Nicoson: Just a minute. I move to strike that latter portion.

Trial Examiner: That part of the answer which says, "so all the men around there could hear it," may go out.

Q. (By Mr. Heimann): Now, at that time, where were the other men standing, or sitting?

A. Well, it seemed like they all followed him out to where he was. They were eating lunch under a tree a little ways back. [183]

All followed him up to where I was working. Fairly close, I should say eighteen to twenty feet. Something like that; outside of the machines.

Q. You say Mr. Musro talked in a loud voice?

A. Fairly loud, to be sure all the men could hear it.

Q. From your judgment, could all the men there hear it? A. Should have.

Mr. Nicoson: Object to on the grounds that no proper foundation having been laid, calls for a conclusion of the witness.

Trial Examiner: Overrule objection.

Mr. Nicoson: May I briefly ask the witness one question.

Trial Examiner: Go ahead.

Mr. Nicoson: Are you hard of hearing?

The Witness: Little bit.

Mr. Nicoson: Renew my objection.

(Testimony of Fred Neuenschwander.)

\* \* \*

Q. (By Mr. Heimann): Do you remember whether Mr. Mussro said [184] anything else to you during that conversation?

A. Well, I don't recollect of anything, no.

Q. Did he mention anything about Crook Company?

A. Well, he asked me, he says, "Did you come through the picket line down there?" I said, "Yes, I did."

Q. I see. Now, did you say anything else to Mr. Mussro?

A. Well, at the time, when he said, you had better leave, or something like that, I said, "Well, I am going to be through here in five or ten minutes, and I will be gone."

Q. Did you finish your job?                      A. I did.

Q. How long did it take you to finish, approximately?

A. Well, at least half or three-quarters of an hour to make that adjustment.

Q. What did you do then?

A. Well, I picked up my tools and went out to my pick-up.

Q. And took off? You left then?

A. Well, I put them in the pick-up. I watched for a minute or two to see what was going on.

Q. All right. What did you see, if anything, that was going on?

A. Well, Mr. Mussro called all the men over to

(Testimony of Fred Neuenschwander.)

his car, which was standing just behind this machine, and he was talking to them and, [185] evidently——

\* \* \*

Q. (By Mr. Heimann): You didn't hear what he said to the men, is that right?

A. Not for sure, no.

Q. Did you see anything?

A. All the men were taking out card permits, or something, and showed it to Mr. Mussro, and, evidently, he looked at their name.

Mr. Nicoson: Just a minute.

The Witness: And looked at their card.

\* \* \*

Q. (By Mr. Heimann): All right. Tell us what you saw? A. And, he wrote something down.

Q. All right.

A. And, I watched for a minute.

Q. All right.

A. As he was going on and counted six or seven men; got in my pick-up and left. That was the end of the work.

Q. Do you know approximately when you left?

A. Well, it was a little after 12:00 o'clock.

Q. You don't know how long after 12:00?

A. No, I didn't have a watch with me. It was approximately ten or fifteen minutes after 12:00, I guess. [186]

\* \* \*

(Testimony of Fred Neuenschwander.)

Cross-Examination

By Mr. Nicoson: [187]

\* \* \*

Q. Where was this machine located in relation to where the men was eating?

A. Well, they were to the right of it.

Q. About how far away, were they?

A. Eighteen to twenty feet.

Q. To where they were eating lunch under the tree? A. Yes, they were further than that.

Q. How far?

A. I can't say. I would judge, probably, forty feet. Some might be a little more. I don't [191] know.

Q. Now, when Mr. Mussro came over there, he, you said, talked in a loud voice?

A. He did, when he made the remark, "We are not going to work."

Q. All right. He told you that in a loud voice, is that your testimony? A. Well, yes.

Q. And, you say Mr. Mussro seen and talked to you before?

A. Well, he spoke to me around the shop there.

Q. Several times?

A. As I said, two or three times.

Q. He knew you were hard hearing?

A. I don't know if he did, or did not.

Q. He knew people had to talk louder than the normal tone of their voice, isn't that true, to make you understand?

(Testimony of Fred Neuenschwander.)

A. They don't have to talk too loud, maybe just a little bit. [192]

\* \* \*

### Redirect Examination

By Mr. Heimann:

Q. You said that Mr. Mussro made that remark with, not going to work, in a loud voice?

A. Fairly loud, yes.

Q. In what tone of voice was the other conversation between you and him?

A. Oh, just normal.

Q. Was it not as loud?

A. Loud enough so I could hear.

Q. Well, was the remark, "We are not going to work," was that louder or not?

A. Yes, it was a little louder.

Q. All right. You say the men were at first forty feet away from you?

A. Somewhere around there.

Q. At the time Mr. Mussro made that remark, how far away?

A. Well, should say around eighteen feet, maybe a little less. I don't know. [193]

\* \* \*

EUGENE SMEDLEY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Heimann:

\* \* \*

Q. On that date, when did you have your lunch time? [195]      A. At 11:30 on that day.

Q. When do you usually have it?

A. At 12:00 o'clock.

Q. What was the reason for having it earlier that day?

A. We were waiting for a pushcat to arrive on the job. We stopped to eat at 11:30, so we would be ready to go to work as soon as it got there. It would get there about 12:00.

Q. Was your usual lunch hour at 12:00?

A. Yes.

Q. How long is it?

A. Half an hour, 12:00 to 12:30.

Q. Now, on that day did you see—well, let me ask you this, you saw the last witness this morning, Mr. Neuenschwander?      A. Yes.

Q. On that date, did you see him out on the job?

A. I did.

Q. What time did he arrive there, approximately?

A. Approximately a quarter until 12:00.

Q. What did he do when he got there?

A. Well, he asked us which one of the pieces of



(Testimony of Eugene Smedley.)

equipment was giving us trouble. We told him which one it was.

Q. By the way, which one was it?

A. It happened to be the one I was running.

Q. Then he went and worked on it?

A. Yes. [196]

Q. What happened then?

A. Well, I guess he had been working on it just a few minutes, five or ten minutes, when Mr. Joe Mussro appeared on the job.

Q. Now, who is Mr. Joe Mussro?

A. Business representative.

Q. Of what union?           A. Local 12.

Q. You know him as such?           A. Yes.

Q. You are a member of Local 12?

A. Yes.

Q. All right. What did Mr. Mussro do when he got there at that thing?

A. Well, he asked us first if we knew that the Crook Company was being boy—, picketed, on which there was pro and con answers.

Q. By the way, when *you us*, who do you mean?

A. Well, I and the other operators and personnel working on the job there.

Q. How many other personnel were there, approximately?

A. There were about six, approximately.

Q. About six. By whom were they employed?

A. Crowell & Larson.

Q. All right. Now, he asked you whether you

(Testimony of Eugene Smedley.)

knew that Crook Company was picketed. You gave the answers you indicated. [197]

Then, what happened?

A. Well, he proceeded to go over to the Crook Company man that was making adjustments on the tournapull, and asked him his name.

Q. Did you hear what he said?

A. Yes, I did hear it.

Q. All right. Go ahead.

A. He asked his name; whether he came through the picket line; who sent him out—of which, he answered to all those questions.

Q. Pardon? Of which he did answer to all those?

\* \* \*

The Witness: Well, he asked how long was he going to be, to that effect. He said, he had a few minutes longer to go. He told him he had better leave now. The mechanic said, in five or ten more minutes, he would be finished, and would finish it up.

Mr. Mussro told him he could take his time and he in turn would pull his operators off the job.

Q. (By Mr. Heimann): That is what he said?

A. Yes. [198]

\* \* \*

Q. All right. Then Mr. Mussro turned and walked back to his car, in that direction?

A. Yes, it was to his car.

Q. Yes, go ahead?

(Testimony of Eugene Smedley.)

A. After he got over to the car, he was checking cards. Checking our cards for identity clearance.

Q. Did you hear him say anything to you or to the other employees? A. Mr. Mussro?

Q. Yes?

A. Say anything to us? Well, there was a matter of conversation going on, I don't recall what it was all about.

Q. Did he say anything relating to the man from Crook Company?

A. Yes. He ordered us that as long as there was a picket line there, that the man came through the picket line to work on the equipment, then we were in some type of violation by working, something to that order. That is as close as I can say.

Q. I see. Anything else?

A. Then he noticed the equipment was new and asked when it was delivered, of which he was informed it had been delivered the day before. And, he wanted to know whether they had come through the picket lines or not. Which, we couldn't answer that. I wasn't present when they were delivered, and he said [199] that he was going to take the serial numbers of the equipment, which he did.

He informed us that he was going to check on them and see whether they had come through the picket line and, if they had, we would be shut down permanent when he came back.

Q. Now, what else did Mr. Mussro do during that time, if anything?

A. Well, during that period of time, he was

(Testimony of Eugene Smedley.)

checking our identification, as I said. It all didn't happen at once. As time when on, he was checking one individual and talking with us at the same time.

Q. And, how long did it take him to do that?

A. Well, he was there—he got there somewhere in the neighborhood of five minutes until twelve, and he left the job about five minutes until one. [200]

\* \* \*

Q. All right. Now, has Mr. Mussro come out on jobs before to check cards?

A. Yes, more times.

Q. More than once?

A. Yes, several times.

Q. How long does it usually take him to check these cards?

A. Usual procedure is to stop one or two pieces of equipment at the same time and check their identification and clear them, and return those to working.

Over-all average job, such as we had there, it shouldn't have taken over ten minutes at the longest, I believe.

Q. Now, you say Mr. Mussro left about five minutes until one. Did he tell anything to you then?

A. Well, he had given us the order to go back to work.

Q. When was that?

A. That was just shortly before he left.

Q. And, had the Crook Company man gone by then? A. Yes, he had left some time earlier.

(Testimony of Eugene Smedley.)

Q. All right. Did Mr. Mussro say anything else regarding the equipment?

A. Well, other than to inform us that we were to immediately walk off the job if Crook Company was ever to come on to our job, from there on. [201]

Mr. Heimann: No further questions.

### Cross-Examination

By Mr. Nicoson:

Q. Did you know where they got the tournapull from that you were working on, Mr. Smedley?

A. At the time, no, I didn't know.

Q. Did you learn about it that particular day, where it came from?

A. I heard rumors to the effect where it might have come from.

Q. You heard it came from the Crook Company, didn't you?

A. Yes, I heard it did. [202]

\* \* \*

Q. But, there was considerable talking among the men at the time this business agent was there this particular day?

A. Yes, they were bringing up different things.

Q. Now, when the business agent, or business representative, came on the job, it was also his duties, is it not, to talk to the men, or the men will talk to him about different things, transfers, beefs, or what not?

A. Yes.

Q. You understand it was his job to listen to those to see what he could do to make the men satisfied?

A. That is right.

(Testimony of Eugene Smedley.)

Q. That is his job? A. That is right.

Q. So, when a business agent comes on the job, he has to listen to these men with their problems, the conversation, whether he likes it or not?

A. Yes.

Q. That is routine, isn't it?

A. That is routine, yes.

Q. You attended many of those sessions like that, since you have been in this business, haven't you? A. Yes, I have. [205]

Q. Nothing unusual about that? A. No.

Q. There are times when he comes on the job that there is not as much conversation, he checks the cards and gets right off?

A. That is right. Other times, much more time is spent.

Q. And, that was one of them?

A. That is right. [206]

\* \* \*

Q. Well, in any event, after March 30th, nobody ever told you not to work on any Crook machinery, did they? A. No.

Q. And, as far as you are concerned you take it as it comes, whatever the man tells you to run, it doesn't make any difference where it came from?

A. That is right, as long as I am told to run it.

Q. And that has been going on since March 30, 1955?

A. That is right. That was even prior to March 30, 1955, too.

Mr. Nicoson: That is all.



(Testimony of Eugene Smedley.)

Redirect Examination

By Mr. Heimann:

Q. On that date, March 30th, Mr. Smedley, did you hear Mr. Ulibarri talk about his name change?

A. I don't recall of it, no.

Q. Were you standing near Mr. Mussro at the time, while he was out there?

A. Yes, I was in the near vicinity all the time.

Q. Now, you told Mr. Nicoson here, that the business agent not only checks the cards but listens to the men about their beefs and talks to them. When he does that, when he talked to a man, what do the others usually do?

A. Well the others are usually work, they are not all usually order to stop at the same time.

Q. I see. And, on that date, nobody was working while he was [207] there, is that right?

A. No one was working.

\* \* \*

Q. You also told Mr. Nicoson that sometimes it takes less time and sometimes more time of the business agent. When does it take more time, usually?

A. Well, that depends on the union members themselves, as to what their particular gripes are, whether they have a long-winded one, or one that can be answered shortly.

Q. I see. How long does it usually take, when it takes longer? You said, ordinarily it takes ten minutes.

(Testimony of Eugene Smedley.)

A. That question is kind of hard to answer. That particular job had much more equipment on it than at other times. Like on a particular job spread, that time I was running two tournapulls on a job with five or six operators on the job.

I would say five or ten minutes on that particular amount of men.

\* \* \*

### Recross-Examination

By Mr. Nicoson:

Q. Mr. Smedley, don't some of the men go back to work, they went back to work while Mr. Mussro was still checking cards?

A. No, sir, I don't believe anybody did. [208]

Q. Didn't he tell them to go back to work?

A. No.

Q. What about this, don't you recall Mr. Mussro was parked in front of a piece of equipment, Mr. Ulibarri was supposed to operate and Mussro had to move his car so Mr. Ulibarri could go back to work?

A. Well, Mr. Mussro's car was parked behind one of the tournapulls and directly at the side of the road. Which he was facing into the tournapull, the rear end of his car was approximately ten feet from the edge of the paved road, that was running down there.

Q. So, he had to move it so the equipment could get to work?

A. He had to move the car? Not necessarily from any of the equipment, as I recall.

(Testimony of Eugene Smedley.)

Q. He had to move the car so the equipment could move? A. Yes.

Q. He did that? A. Yes.

Q. Let me ask you, to be sure you did. Did you just now ask, rather tell me, that Mr. Mussro didn't tell the people to go back to work, before he stopped checking the cards?

A. No, he didn't tell any of us to go back to work until just shortly prior to the time he left.

Q. I am going to ask you, if you didn't testify in the Federal Court, that you testified before Judge Yankwich, in [209] the case of "Yager vs. Operating Engineers" in Federal Court?

A. I was up there awhile.

Q. Well, you were on the witness stand?

A. Yes, I was.

Q. Mr. Heimann asked you some questions, Mrs. Selvin asked you questions. If, I suggest to you that was on Tuesday, July 12, 1955, would that sound right? A. That would sound right.

Q. That would sound right. Okay, were you there? A. Yes.

Q. I will ask you, that at that time you testified that Mr. Mussro had given permission to go back to work, before, while he was still checking the cards?

A. Yes, I believe I did testify to that effect.

\* \* \*

Q. (By Mr. Nicoson): You testified to that?

A. That is, yes. Mr. Mussro checked the cards right up to the second he left the job.

(Testimony of Eugene Smedley.)

Q. And he had given permission to go to work while checking the cards?

A. Yes, just prior to the time he was checking cards a minute before he left. [210]

\* \* \*

Trial Examiner: Did you hear any employees expressing griefs, with regard to Mr. Mussro on this?

The Witness: All of them had things to say to him.

Trial Examiner: On the job out there?

The Witness: Yes, at that time.

\* \* \*

### TONY DIAS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

### Direct Examination

By Mr. Heimann: [211]

\* \* \*

Q. How long have you been employed by Crowell & Larson? A. Year and a half.

Q. Now, on or about March 30th, you were on the Glendora job? Mr. Smedley and I talked about with you? A. I was.

Q. What was your job there? A. Foreman.

Q. When did you break for lunch that day?

A. 11:30.

\* \* \*

Q. Now, did you see a Crook Company man get

(Testimony of Eugene Smedley.)

out there to the job on that day?      A. I did, yes.

Q. And, did he work on the tournapull?

A. Yes. [212]

Q. And, did you see Mr. Mussro come out to the job?      A. Yes.

Q. And what time did Mr. Mussro arrive?

A. Well, it was between five and ten minutes until 12:00.

Q. By the way, did you know Mr. Mussro? Did you know him before then?      A. Yes, I did.

Q. Who is he?

A. He is the business representative of Local 12.

Q. And, you are a member of Local 12?

A. Yes.

Q. And, how long had the Crook Company man been there by that time?

A. Well, he had been there about ten minutes.

Q. All right. What did Mr. Mussro do when he arrived?

A. Well, he approached the job and he looked at the pick-up and asked what Crook Company was doing on the job. So, we told him what he was doing.

Q. All right, what did Mr. Mussro do then, if anything?

A. He walked over to where the mechanic was working on the tournapull.

Q. What mechanic?

A. I can't pronounce his name.

Q. The mechanic from Crook Company?

A. Yes. [213]

Q. Did you hear him talking to the Crook Com-

(Testimony of Tony Dias.)

pany mechanic?           A. I did.

Q. What did he say?

A. When he first approached him, he asked his name and who sent him. Then, he also introduced himself, and asked him what he was doing; to which, the mechanic replied he was fixing, adjusting, the clutch on the tournapull.

Mr. Mussro told him, he ought to leave the job. He said, he wasn't going to leave until he finished the job he was sent out to do on that machine.

And, Mr. Mussro asked him again. The second time, he said, "he had better leave or we don't work." And, this mechanic continued to work. So, he took us on over by his car.

Q. All right. Did he say anything to you there?

A. Well, he first, he checked our cards, and——

Q. Let me interrupt you there. Did he say anything to you or to the other Crowell & Larson employees, before he took you over to the car?

A. Yes, before when he pulled us away from the tournapull, he was saying something about, "If we didn't know there was a picket line around Crook Company?"

Which I, and a couple of operators, said we didn't, which I didn't know there was at that time.

Q. Anything else? [214]

A. Well, he made the statement there, and asked if we didn't know it was wrong to have one of the Crook Company men to come out to do repairs on equipment that was entitled to our mechanics, of our own union to do.



(Testimony of Tony Dias.)

Q. Now, to whom did he say, "We just won't work"? A. To all of us.

Q. To all of you? A. Yes.

Q. Crowell & Larson employees? A. Yes.

Q. I see. All right then, he took you over to the car and checked the cards, right? A. Yes.

And, when talking, he said, "Talk a little more about the picket line and stuff like that." Then, he started checking our cards.

Q. Who talked about the picket line? Did the employees or Mr. Mussro?

A. Well, one question came from one, one from another. They wanted to know just what it was all about.

Q. I see. Now, how long did that card checking take?

A. Well, the card checking itself didn't take very long, it was just a matter of a few minutes. [215]

\* \* \*

Q. (By Mr. Heimann): All right. When did Mr. Mussro leave?

A. He left, well, it was five minutes until one. Five or ten minutes until one, when he left.

Q. And, did he tell you at any time to go back to work?

A. Well, before he left he noticed the "pulls" were new and he wanted to know if—he asked me, if them "pulls" came through the picket line. I said, "I don't know." He said, "I want to get the serial numbers of them and find out if they came through

(Testimony of Tony Dias.)

the picket line. If they did, then I will come back and shut down tight."

But, up to that time he had never gave us word to go back to work.

Q. About what time was that?

A. Just before he left.

And, just before he got ready to leave, I made the statement, in a joking manner, I said, "Listen Joe, we got to work, we got to make a little money." Mr. Mussro replied, "You go ahead and tell your men to go back to work and I will find out if them machines came through the picket line. If they did, I will be back. If they didn't, I won't be back." [216] And, which he never returned.

Q. All right. Now, did you say, when you told him you had to earn a little money, that was a few minutes before he left?

A. Yes, just as he was getting in his car to leave.

Q. I see. Okay, now, did you make out a time card?

A. Yes, I did.

Q. You regularly make out time cards for the jobs for which you are foreman?

A. Yes.

Q. Will you tell us whether this is the time card you made out for that day?

A. Yes, it is.

\* \* \*

Q. (By Mr. Heimann): Now, calling your attention——

Tell me first, in the first column, under employees names, certain names are there, will you tell us what these names are?

(Testimony of Tony Dias.)

A. They were the men working on the job.

Q. Next, comes a column with a lot of "9's" and a "7" too, what does that represent?

A. Well, the "9's" is the hours the men worked. The "1's" [217] is while we were down. That represents the ten hours for the day.

Q. You mean the one in the third column, that makes up the ten hours for the day?

A. Yes. The "7" in the first column, he worked two hours, prior to coming to my job.

Q. All right. Now, these "1's" in the third column, appearing under the heading "Union Shut Down, Down Time," now, who wrote this in that column?

A. Gene Carpter.

Q. Gene Carper. Who is he?

A. Superintendent.

Q. After that it says, "Union shut down." Then the next work I believe it says, "Signed," by, "Tony Dias," who wrote that?

A. I did.

Q. And who signed it?

A. I did.

Q. And, that is indicated. What does that one hour indicate then?

A. That is when we were shut down for one hour.

Q. On account of what?

A. Well, our business agent told us we couldn't work, so we was idle for about an hour. [218]

(Testimony of Tony Dias.)

Cross-Examination

By Mr. Nicoson:

Q. Mr. Dias, I show you document which is in evidence as Board's Exhibit No. 4, this writing of the names here, in the left-hand column under, "Employees' Names," that is your handwriting, isn't it? A. That is my writing. [219]

Q. Isn't it a fact, you made these documents out full and complete before Mr. Carpter saw it?

A. I gave the men ten hours.

Q. You gave the men ten hours, in the first column?

A. Mr. Carpter came out and told me to change that to nine. He asked if our business agent, he asked, "He came out, I understand you were down for about an hour? Take it from ten and show the other column for one hour." He wrote that in himself. [220]

\* \* \*

Q. So you all had lunch and went over and sat down, then he started the card checking?

A. Well, there was a little talk going on about picket lines before the card checking took place.

Q. You got in a general discussion amongst yourselves, didn't you?

A. Well, he was telling us about—— [221]

Q. Some people had heard about the picket line, some people hadn't? A. Yes.

Q. The men talked amongst themselves about

(Testimony of Tony Dias.)

the picketing line, what the problem was the Crook people were having, taking engineers on the job, all these things were discussed, is that right?

A. Right, yes.

Q. Now, you know Mr. Ulibarri, don't you?

A. Yes, I sure do.

Q. Sort of a long-winded individual?

A. Yes, at times.

Q. He talks about a great many things at considerable length?      A. Yes.

Q. He did a lot of talking about things to Mr. Mussro that day?      A. Yes. [222]

\* \* \*

Q. Now, at any time, during the presence of Mr. Mussro, did you, as a representative of the company on the job, direct the men to go back to work?

A. When he left, yes.

Q. But not before?      A. No.

Q. You could have done it, couldn't you? That would be part of your job as foreman?

A. Yes. [223]

\* \* \*

Q. And, has anybody, since March 30th, refused to run one of the trucks?

A. Not to my knowledge.

Q. Has anybody prior to March 30th, refused to operate one of them?

A. Not as far as I know. [224]

\* \* \*

(Testimony of Tony Dias.)

Redirect Examination

By Mr. Heimann:

Q. When did Mr. Carpter talk to you about that time card?      A. About 3:20.

Q. Same day?      A. Yes, same day.

Q. Now, did he ask you about the shut down? Did he ask you any questions about the shut down?

A. When he asked me if I had the time sheet made out, yes. I told him yes, it was in my car. I went over to get it, I handed it to him. He looked at it and he said, "I heard you had a little trouble with the union." That is when I went on to explain to him our business agent had been out and held us up for about an hour.

Q. Then he told you to change the '10's' to '9's'?

A. I proceeded to, he did it himself. I started to put it on my knee, then he changed it himself in the cab there in his pick-up.

Q. I see. Now, you told Mr. Nicoson, that the men talked [225] amongst themselves about the picket line?      A. Yes.

Q. Did Mr. Mussro participate in that conversation?      A. Yes, he did.

Q. He was part of the conversation all the while there?

A. Yes, he explained to use about it.

Q. I see. Now, you said Mr. Ulibarri asked Mr. Mussro a few questions about it? I didn't get, about what?



(Testimony of Tony Dias.)

A. About the picket lines, he asked about it.

Q. Then Mr. Mussro explained that to him, is that right?      A. Yes.

Q. Did you hear Mr. Ulibarri talk about his name change?      A. No, I didn't.

Q. Now, you said you intended to have the men to go back to work at 12:00 o'clock.

A. Yes.

Q. And you told Mr. Nicoson, during the time Mr. Mussro was there, you did not direct them to go back to work?      A. No, I didn't.

Q. What was the reason?

A. When he told us to go back over to his car or he would shut it down.

Q. That is the reason?      A. Yes.

Mr. Heimann: No further questions. [226]

### Recross-Examination

By Mr. Nicoson:

Q. When Mr. Mussro was there, these men were asking questions; Mr. Mussro was trying to answer?      A. That is right.

Q. And you had individual problems you wanted to talk over with Mr. Mussro too, didn't you?

A. Myself, no.

Q. Wasn't there some problem about your clearance?      A. No, that was Weiss.

Q. Weiss was the man who had the problem about the clearance?

A. Yes, he was on an operator's card.

(Testimony of Tony Dias.)

Q. How long did the conversation about this Weiss clearance last?

A. Oh, just about five minutes. [227]

\* \* \*

VALENTINE SANTILLAN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Heimann:

\* \* \*

Q. And, by whom are you employed?

A. Crook Company.

Q. What is your job there?

A. Mechanics helper?

Q. How long have you been so employed?

A. I would say approximately three and a half years.

Q. Now, on or about April 19th of this year, did you go to the Union Pacific Dock? [239]

A. I did, yes.

\* \* \*

Q. And, did you go by yourself, or did somebody go with you?

A. No, I left the yard with Bill Soles, the mechanic.

Q. Came with you?

(Testimony of Valentine Santillan.)

A. Yes, we left in the pick-up truck from our Sheila Street Yard.

Q. All right. Now, what were you supposed to do at the Union Pacific?

A. Well, we were supposed to service some rollers, load them off flat cars and get them ready for delivery.

Q. For delivery to whom?

A. Well, one was to go to Paving Materials and another to Kirst Construction.

Q. Pardon me? A. Kirst Construction.

Q. Now, the one that was supposed to go to Paving Materials, were you supposed to take it out to Paving Materials?

A. No, the truck drive was supposed to come on truck and [240] load it up and take it out to his company.

Q. And, you were supposed to get it ready for him? A. Yes, that is right.

Q. All right. Now, when did you get to the Union Pacific dock?

A. Well, we arrived there, I would say, about 8:30 or a little before 9:00.

Q. And, were you followed on the way?

A. Yes, we were followed by a Mr.—by a blue Chrysler, say about a 1953.

Q. All right. And who was in the blue Chrysler?

A. Willis, I think that is his name anyway.

Q. Do you see him here in the hearing room?

A. Yes.

(Testimony of Valentine Santillan.)

Mr. Heimann: May the record show that the witness is pointing to my, not the next witness, the one after the next.

Q. (By Mr. Heimann): Had you seen him before anywhere?

A. Yes, I seen him several times on the picket line, directing pickets and following some of our employees, too.

Q. I see. Now, did he follow you all the way to the Union Pacific?

A. Well, no. When we thought we had left him on Grande Vista, because we turned off some other way; so, when we decided he wasn't with us any longer, we went ahead on to the Union Pacific docks, and a short while later, while we were servicing these [241] loaders, there he was.

Q. He was there? A. Yes.

Q. I see. Okay, what did you do when you got there?

A. Well, we went ahead and knocked out some blocks, serviced some rollers, started unloading on top of the dock.

Q. Now, where was Mr. Willis at that time?

A. Well, he was, I would say about fifty feet away from the dock.

Q. In his car? A. In his car, yes.

Q. What did he do, if anything?

A. Nothing, he just sat there and watched us, I guess.

(Testimony of Valentine Santillan.)

Q. Okay. Did the man from Paving Materials ever come?

A. Yes, I would say he arrived about 11:30, somewhere around [242] there.

Q. All right. Did he talk to you?

A. Yes he did. He asked me, if there was any union men around, and I said, there was, he was sitting right across the track there.

So, we went ahead and kept on working nothing stopped. The truck driver just stood there and watched us while we got; well, we had one roller in between the flat and the dock, and he was, we were having difficulty in getting it off the truck. So, he just stood there for awhile and watched us.

Q. All right. Go ahead and tell us what happened, then?

A. Well, we finally got it up on the dock. He decided he was going to talk to his boss about the union men.

\* \* \*

Q. (By Mr. Heimann): The truck driver, what did he say?

A. Well, he said, he was going to take it so long as there was no picket line.

Q. All right. Then what happened?

A. I was going to get ready to roll the roller on his truck, he straightened it up along the side of the dock there.

I started to move the roller, when Mr. Willis went over to talk to the truck driver. So, I stopped what I was doing. [243]

(Testimony of Valentine Santillan.)

Q. You didn't hear what was said?

A. No, I didn't.

So, I just stopped what I was doing and stood and watched what was taking place.

So, a short while later, the truck driver came up and said he was going to call his boss and see if he should take the roller or not.

So, he made a phone call, then came back and said the boss said he should take it so long as there was no picket line.

So, when he came back from the phone call, he went over and talked to Mr. Willis there; and, a short while later, Mr. Willis and another fellow, they went to one of the cars.

Q. Who was the other fellow?

A. I don't know him.

Q. Not the Paving Materials man?

A. No, another union man.

Q. All right. Go on.

A. They went to one of the automobiles and pulled a couple of picket signs from the trunk and started picketing up and down along side of the dock.

So this truck driver said he couldn't take it seeing as how there was a picket line there.

So, I don't know what to do, so I started walking towards the railroad office. Mr. Jessie Sands stopped me. He worked for the Union Pacific Railroad. So, he asked me what the [244] trouble was, and I told him. He said, never mind, I will go get



(Testimony of Valentine Santillan.)

him to stop picketing here. They are not supposed to picket on railroad property anyway.

So, he went in the main office, he came out with some gentlemen; they talked to Mr. Willis and the other man with him.

And, so, short while later, they took the picket signs and put them in their cars and took off.

Q. Now, had the Paving Materials man left by that time?

A. Yes, I think he did. I am not sure now.

Q. Did he take the rollers?

A. No, he did not.

Q. Do you remember what was on the picket signs? A. No, I can't say for sure.

Q. And, how long had Mr. Willis and the other man carried those picket signs back and forth?

A. Well, it wasn't but a few minutes that they picketed back and forth.

Q. About how many minutes?

A. I would say about fifteen minutes.

Q. And where, just where, did they carry them?

A. Well, it was the right side of the dock there. Parallel with the dock, next to our equipment.

Q. I see. Next to your equipment?

A. Yes. [245]

Q. And the truck was, the Paving truck, where was that at the time?

A. That was right in the same place there.

Q. I see. Now, do you remember if the man from Paving Materials said anything else to you after the picket signs went up?

(Testimony of Valentine Santillan.)

A. Well, he just said that he couldn't take the roller because there was a picket sign and he was afraid of being black-balled that he had seen a lot of it happen and he just didn't want to get involved in it.

Q. All right. By the way, did you see that man in the hearing room?

A. The truck driver?

Q. Yes?

A. He is sitting in back of you there.

Mr. Heimann: May the record show, he will be my next witness. [246]

\* \* \*

### LOUIS L. VLASHART

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Heimann:

\* \* \*

Q. (By Mr. Heimann): And, how many employees does Paving Materials have, approximately?

A. Oh, about, on and off, I would say about twenty-five.

Q. And, how many truck drivers?

A. Three.

Q. Now, on or about April 19th, did you drive a truck to the Union Pacific dock?

(Testimony of Louis L. Vlashart.)

A. I did.

Q. You have a trailer with you?

A. Yes.

Q. What were you to do at the Union Pacific dock?      A. I was to pick up a roller.

Q. Do you know from whom?

A. No, I didn't know from whom it was supposed to have been at the docks, I guess it was Union Pacific docks at 7th and Alameda, around there.

Q. And, did you see the man there, how just testified?

A. The man who just testified, yes. [253]

Q. What were they doing when you got there?

A. Him and another fellow were trying to unload a roller off the flat car on the docks.

Q. By the way, what time did you get there?

A. Well, it was in the neighborhood, about 11:30 or 12:00. I didn't have no record of it.

Q. And, they were working on those rollers, you say?      A. Yes, just the one roller.

Q. Okay. What were they doing?

A. Well they, it had slipped off the flat car, in between the dock and the flat car, they were trying to get it back on the flat car so they could get it in position to get it on the docks.

Q. What were you doing at that time?

A. I was just standing around, talking to them.

Q. All right. Did they get it back on the docks?

A. Well, finally, after they called some kind of

(Testimony of Louis L. Vlashart.)

crane truck, or something, they got it back on the dock. On a flat car, first.

Q. Then, on the dock?

A. Then, they readjusted their loading plates and loaded on the docks on its own power.

Q. What did you do then?

A. Well, I figured it was about ready to load, so I straightened up, pulled alongside the docks. I have a tilt bed trailer. I [254] have to tilt it down and set skids in order to roll this roller upon the trailer.

So, I pulled the truck up and got out of my truck. Then this representative, from Local 12, introduced himself.

Q. Did he give you his name?

A. Well, he did. I don't recall it. I seen one of the men that I think is sitting here, I don't know if it was that man that introduced himself.

Q. I see. He was there?

A. Yes, he was one of the representatives there at the time.

Q. I see. And, he is the one sitting next to Mr. Nicoson now?

A. That is right.

Q. Now, when they introduced themselves, did they say anything else? Did they say whom they represented?

A. Yes, he said he was a representative of Engineer's Local 12.

Q. All right. Did they say anything else to you?

A. He asked me if I knew anything about that roller being hot, and I told him, no I didn't know

(Testimony of Louis L. Vlashart.)

anything about it. And, he proceeded to tell me that they had a picket line down at Crook Company and it was hot, so they advised me to call my business agent at my local before I should proceed to load it, pick it up.

Q. Did you say anything?

A. Well, I told them, I believe it was at that time, I had [255] orders from my boss to load the roller if there was no union dispute or picket line, or anything around at the place I was supposed to pick it up.

Q. All right. Did you get any reply to that?

A. Well, didn't have a picket line there, so I thought I would call my boss to find out just what I should do, and I went over to the railroad station phone there and called him. And, he advised me, if there was no picket line there, to go ahead and load the roller.

So, then I came back to where these representatives of the union were sitting in their car, and I told them what my boss had told me, so they say, well, if that is the case, or something like that.

In the meantime, another fellow had driven up.

Q. Where?

A. Up to where this other car was.

Q. Another union representative?

A. I guess he was, I don't know. He was a union man.

One of them went over to him, the union man, and said something about taking the roller if there was no picket line.

(Testimony of Louis L. Vlashart.)

Q. That is what you said?

A. No, that is what he told this other union man.

He said, "Well, if that is all it takes, we'll put one up right now." So they proceeded to take the signs out of the car and walked in the vicinity of my truck and the dock there. [256]

Q. How many signs?

A. Two, I believe.

So, I went back and called my boss again and told him they had set up a picket line. So, he advised then to get in my truck and come on back in without the roller.

Q. All right. A. Which I did.

Q. What did you do then?

A. What did I do?

Q. Yes?

A. I came on back and got in my truck and went on back to the plant. [257]

\* \* \*

### Cross-Examination

By Mr. Nicoson:

\* \* \*

Q. The first thing you did was to talk to the Crook man and find out whether there was any trouble?

A. We started a conversation and it led up to something. I don't believe, I think there was some dispute about the union before I even asked him if there was a union man around.



(Testimony of Louis L. Vlashart.)

Q. Well, this thing came up in carrying on a conversation while you were standing there talking to these fellows trying to get the roller back on the flat car? A. That is right.

Q. That is when he told you there were a couple of union men around there, is that right?

A. That is right.

Q. That is when you looked around and saw these union men sitting in the car? A. Yes.

Q. Did you go over and talk to them?

A. Not at that time, no. [259]

Q. Did you later go talk to them?

A. They approached me the first time. After I made my phone call, then I went back and talked to them. They were sitting in the car.

Q. That is when you told them that your boss told you that so long as there wasn't a picket line, it was all right to bring the roller home? That is when they said, if that is all they need, they pulled out picket signs and started picketing.

That is when you walked over and telephone your boss and said, "Well, now I got a picket line", and your boss said, "Come on home."

A. That is right.

\* \* \*

WILLIAM C. WILLIS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Heimann:

Q. Will you state your name and address, please? [260]

A. William C. Willis, 3238 Mangum Street, Baldwin Park, California.

Q. What is your occupation, Mr. Willis?

A. Business representative for the International Union of Operating Engineers, Local Union No. 12.

Q. And, how long have you been business representative of that union?

A. Since May of 1941.

Q. Continuously? A. Right.

Q. Do you hold any other office in the union?

A. Yes, I am vice president of the organization.

Q. And, how long have you been vice president?

A. Well, for a period of approximately one year. [261]

\* \* \*

## MICHAEL S. BESSICH

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Heimann:

\* \* \*

Q. What is your occupation?

A. I am general manager of Crook Company.

Q. And what is your function as such?

A. Oh, to overlook the operations of the company.

Q. Well, would you tell us in a little more detail?

A. Well, to work hand in hand with the heads of the departments, the various departments and under Mr. Crook; the shop and parts department and the sales department.

Q. Are there any other departments?

A. Shop, parts, sales and accounting.

Q. Are they under your supervision, too?

A. Yes. [264]

Q. By the way, how long have you held that position, Mr. Bessich?

A. I have held that position since February 1, 1955.

Q. And prior to that time, were you with the Crook Company?           A. Yes.

Q. In what capacity?           A. As controller.

Q. And what was your position as controller?

(Testimony of Michael S. Bessich.)

A. Well, I was more concerned with finances and the accounting end of the company at that time.

Q. Now, would you tell us what kind of a company Crook Company is, and what kind of business it is in?

A. We are engaged in the sale and service of construction equipment.

Q. Is that retail or wholesale? A. Retail,

Q. And where do you get the equipment from?

Mr. Nicoson: Objected to on the ground that there is no proper foundation laid and secondly, it is immaterial, there being no allegation in this complaint as to——

Trial Examiner: I will overrule the objection. You may answer.

The Witness: I would say ninety to ninety-five per cent of our material comes from the middle western states, Ohio, Illinois, Wisconsin, Pennsylvania and that area. [265]

Mr. Nicoson: I move to strike it on the grounds that it is a conclusion and hearsay.

Trial Examiner: I will deny the motion.

Q. (By Mr. Heimann): Do you have anything to do with the sales of equipment by Crook Company?

A. Yes, I work with the sales manager and the salesmen on their prospective sales.

Q. And does every sale of equipment come to your attention, Mr. Bessich?

A. I would say every sale that there is any point in discussing will come to my attention. There may

(Testimony of Michael S. Bessich.)

be an occasional sale that is made, where there is no question of the equipment or of the credit standing of the company or things of that nature.

Q. I see. Now, does Crook Company sell any equipment outside the State of California?

A. Yes.

Q. And will you tell us the annual volume of sales of equipment outside the State of California, approximately?

Mr. Nicoson: That is objected to, first, on the grounds that there is no foundation having been laid; secondly, it isn't the best evidence and thirdly, it is hearsay, and immaterial, incompetent and irrelevant.

Trial Examiner: Is your question the annual sales outside of the State or for a particular year; which do you have in [266] mind?

Mr. Heimann: I asked for annual.

Trial Examiner: I will overrule the objection. You may answer.

The Witness: Well, our sales annually out of State will vary. I do know that our sales annually out of State will be quite a bit in excess of \$50,000.00 per year.

Mr. Nicoson: I move to strike it as a conclusion on the part of the witness.

Trial Examiner: I deny the motion.

Q. (By Mr. Heimann): When you say, "quite a bit in excess of \$50,000.00 per year", is it in excess of \$100,000.00?

(Testimony of Michael S. Bessich.)

Mr. Nicoson: Objected to as leading the witness.

Trial Examiner: Overruled.

The Witness: Yes, it would be in excess of \$100,000.00.

Q. (By Mr. Heimann): All right and would you tell us what your annual volume of total sales is approximately, or in excess of a certain figure—my question includes sales within California and sales outside the State of California, Mr. Bessich?

Mr. Nicoson: Objected to, first, on the grounds of no proper foundation having been laid. It isn't the best evidence, it is hearsay and immaterial, incompetent and irrelevant.

Trial Examiner: Overruled. You may answer.

The Witness: Well, our total sales would be in excess of \$1,000,000.00 a year.

Mr. Nicoson: I move to strike it as a conclusion of the witness.

Trial Examiner: Denied.

Q. (By Mr. Heimann): And are you speaking now of equipment only or of equipment and parts?

A. Our total sales of equipment only would be in excess of \$1,000,000.00.

Q. And is that the equipment of which you testified that ninety to ninety-five per cent of it comes from the Midwest, Mr. Bessich?

Mr. Nicoson: Objected to on the grounds that it calls for a conclusion of the witness and it isn't the best evidence. No proper foundation has been



(Testimony of Michael S. Bessich.)

laid, and it is hearsay, and it is also irrelevant, immaterial and incompetent.

Trial Examiner: Overruled. You may answer.

The Witness: Yes.

Mr. Nicoson: I move to strike it as a conclusion of the witness.

Trial Examiner: Denied.

Q. (By Mr. Heimann): Mr. Bessich, have you within the last twelve months, had any election conducted by the National Labor Relations Board at your firm? A. Yes. [268]

Q. When was that election, approximately?

Mr. Nicoson: March 9, 1955.

The Witness: Yes, I believe that is right.

Mr. Heimann: I accept that stipulation and I don't think I have to ask any further questions on that.

I now ask the Trial Examiner and the Board to take judicial notice of Case No. 21-RC-3855, in which the Acting Regional Director certified on March 30, 1955, that Local 12 of the Operating Engineers is not the exclusive representative of all the employees and the unit defined in the agreement for consent election at Crook Company.

Trial Examiner: Very well. Is there any objection to that?

Mr. Nicoson: No objection.

Trial Examiner: All right.

Mr. Nicoson: I will even stipulate that there was a certification.

Mr. Heimann: The unit was all shop employees

(Testimony of Michael S. Bessich.)

who were in the employ of the employer during the payroll period ending February 15, 1955.

Trial Examiner: All right.

Q. (By Mr. Heimann): Mr. Bessich, have there been, within the last twelve months—has any picketing been conducted at the Crook Company?

A. Yes. [269]

Q. When did the picketing start?

A. Approximately February 17, 1955.

Q. And at what locations?

A. It originally started at our yard location, which is 4957 Shiela Street.

Q. And was there any other picketing at any other location, Mr. Bessich?

A. Oh, approximately one week or one and a half weeks later, the picketing was extended to the office and sales location at 2900 Santa Fe Avenue.

Q. Have the pickets been continuously at those locations since that time?

A. Well, there was a period of approximately one week or ten days, during the time that—or subsequent to the time that we consented to the election, up until the election was held at which time there was no picketing. And then recently the picketing has been, more or less, intermittent.

Q. I see. Now, in regard to that first interruption, round the time of the election, do you remember the exact dates when the pickets were removed and when they were restored?

A. I don't remember the exact date that they

(Testimony of Michael S. Bessich.)

were removed. It would have been the same day that we consented to the election.

Q. It would have been?

A. It was, I believe. [270]

Q. It was?

A. Yes, approximately a week before the election which was held on March 9th.

Mr. Heimann: Well, the record will show that the consent election agreement was approved on March 3rd.

Q. (By Mr. Heimann): And when did the pickets go back, with relation to the election?

A. Well, immediately upon the announcement of the results of the election, on the date of the election.

Mr. Heimann: The record will show that the election was held on March 9th.

Q. (By Mr. Heimann): And that was in the afternoon of the day of the election?

A. It was approximately 12:30 or 1:00.

Q. And the election was held when?

A. I think about 11:30 to 12:00, somewhere in there.

Q. I see. Do you know the wording of the picket signs, Mr. Bessich?

A. Well, they have been changed at—oh, I would say in the last month or last month and a half. Originally they were—the sign said something to the effect that, “Picket Non-Union” and then, “The Operating Engineers, Local 12”, on it.

It was later changed to say, “Crook Company

(Testimony of Michael S. Bessich.)

Unfair", and then it had, "Local 12, Operating Engineers", and then there was the Teamsters' Local mentioned on there. [271]

Q. \* \* \* Are you familiar with the fact that on or about March 30th, an employee of yours by the name of Neuenschwander went to a job in Glendora, in order to repair a tournapull?

A. Yes.

\* \* \*

Q. (By Mr. Heimann): Are you familiar with the manner in which the equipment came into the possession of Crowell & Larson?

A. Yes, I am.

Q. In what capacity did you receive that knowledge and how did you receive that knowledge?

A. Well, it was only a matter of three or four days prior to that, that I went out to their office with our salesman, who calls on them, and we made the deal.

Q. And what sort of a deal was it? [272]

A. It was a rental with the option to purchase.

Q. And do you know when it was delivered to Crowell & Larson?

A. Well, it was approximately the 29th or 30th of March, as I remember it.

Q. And was there any warranty connected with the lease of that equipment?

\* \* \*

The Witness: Yes.

Q. (By Mr. Heimann): Did the warranty re-

(Testimony of Michael S. Bessich.)

late to the service or repair or both, of the equipment?

\* \* \*

The Witness: Our warranty covers any malfunction or a breakage of parts or non-operation—anything that would cause non-operation of the equipment for a period of six months. [273]

\* \* \*

### DON C. MONTGOMERY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Heimann:

\* \* \*

Q. And what is your occupation?

A. I am employed with the Shepherd Machinery Company.

Q. What is your position there?

A. Assistant general manager.

Q. How long have you held that position?

A. Approximately three years.

Q. And what was your position before then?

A. General office manager.

Q. Will you tell us your function as assistant general manager of Shepherd?

A. It is my responsibility to direct the various

(Testimony of Don C. Montgomery.)

activities and various departments of the company. [278]

\* \* \*

Q. And who is your immediate superior?

A. Willard W. Shepherd.

Q. Is he the owner?

A. He is the general partner of the business, yes.

Q. Do you have the same departments and persons under your supervision as Mr. Shepherd, or do you divide the departments and functions between you?      A. No, the same functions.

Q. Will you tell us what kind of company, Shepherd Machinery Company is?

A. It is a partnership.

Q. And what kind of business does it do?

A. Sales and service of construction and farming equipment, et cetera.

Q. Any particular brand?

A. Primarily Caterpillar and John Deere.

Q. When you say, "Sales", does that relate to retail or wholesale?      A. Retail. [279]

\* \* \*

Q. (By Mr. Heiman): And where do you get the machinery from?

A. Primarily from the Midwest, primarily from around Peoria, Illinois.

Q. Is that where the Caterpillars—where the Caterpillar factory is located?      A. Yes.

Q. And you purchased it from the manufacturers; is that right?      A. That is correct.



(Testimony of Don C. Montgomery.)

Q. Now, would you tell us what the annual volume of your purchases from Peoria, Illinois, will approximate?

Mr. Nicoson: That is objected to on the grounds, first there is no proper foundation laid, it isn't the best evidence, it is hearsay and calls for a conclusion of the witness and it is irrelevant, immaterial and incompetent.

Trial Examiner: Overruled. You may answer.

The Witness: We would purchase in excess of \$1,000,000.00 a year.

Mr. Nicoson: I move to strike it on the grounds that it is a conclusion of the witness.

Trial Examiner: Denied.

Q. (By Mr. Heimann): Does your answer relate to the purchases [280] from Peoria, Illinois?

A. Yes.

Q. And will you tell us approximately how much Shepherd sells annually outside the State of California?

Mr. Nicoson: That is objected to on the ground that no proper foundation has been laid and——

Trial Examiner: All right. I will sustain the objection.

Q. (By Mr. Heimann): Does Shepherd Machinery Company sell any equipment outside the State of California?

Mr. Nicoson: Same objection.

Trial Examiner: Overruled. You may answer.

The Witness: Yes.

Q. (By Mr. Heimann): Will you tell us ap-

(Testimony of Don C. Montgomery.)

proximately the volume of these out of State sales per year?

Mr. Nicoson: Objected to on the ground that no proper foundation has been laid. It isn't the best evidence, it is hearsay and calls for a conclusion of the witness, and it is irrelevant, immaterial and incompetent.

Trial Examiner: Overruled. You may answer.

The Witness: We would ship in excess of \$100,000.00 a year to outside the State of California.

Q. (By Mr. Heimann): Will you tell us what States? A. Well——

Mr. Nicoson: Objected to as immaterial.

Trial Examiner: I will sustain the [281] objection.

\* \* \*

Mr. Heimann: I will ask the Trial Examiner and the Board to take judicial notice of Case No. 21-RC-2423, in which the Regional Director certified on June 23, 1952, that Local 12 of the Operating Engineers is not the exclusive representative of the employees of Shepherd Machinery Company and the unit found by the Board to be [282] appropriate.

\* \* \*

Mr. Heimann: I am not through yet, although that will not obviate your objection.

The unit at that time, included all production, maintenance and repair and outside service employees, employed by the employer at the employer's 2757 Atlantic Boulevard location, at Los An-

(Testimony of Don C. Montgomery.)

geles, California, during the payroll period ending May 10, 1952.

\* \* \*

Trial Examiner: I do not see that it establishes anything more than that Local 12 isn't certified. However, I will take notice of it, and I overrule the objection.

Mr. Nicoson: Then you will have to take notice of any subsequent action. You will have to see that the 1952 situation is up to date as of now, and what has happened in the interval. [283]

\* \* \*

Q. (By Mr. Heimann): Mr. Montgomery, has there been any picketing at Shepherd's during the last twelve months? A. Yes.

Q. When did the picket start?

A. About May 23, 1955.

Q. Has it continued ever since?

A. Yes, intermittently.

Q. Always intermittently or—

A. No; rather continuously up until a couple of weeks ago.

Q. And then intermittently? A. Yes.

Q. Do you know what the picket signs read?

A. Initially they read, "This firm is unfair"—no, "This firm is nonunion," and I think was signed by the Operating Engineers.

There was a subsequent change, at which time the sign read, "Shepherd Tractor Company is unfair to organized labor," and was signed by the Operating Engineers and the Teamsters.

(Testimony of Don C. Montgomery.)

Q. Are you familiar with the fact that on or about April 22, [286] and 23 two employees of Shepherd in Lancaster went to a job in Creal, to repair one or more motor scrapers? A. I am.

Q. Are you familiar with the transaction regarding—was it one or two motor scrapers?

A. Two.

\* \* \*

Q. (By Mr. Heimann): I am asking you in respect to whether the equipment came from Shepherd Machinery Company? [287]

A. Yes, the motor scrapers in question were TS.300 and they were from the Shepherd Machinery Company on rental, on a rental basis to Ralph Welker.

\* \* \*

Q. Do you know when this equipment was leased to the Welker firm?

A. The two pieces went out at different times. The lease became effective on both pieces of equipment on April 11, 1955.

Q. Were they covered by your warranty? [288]

A. Yes, they were covered by a thirty-day warranty against defective parts or workmanship.

Q. Now, are you familiar with the fact that on or about May 24 an employee of yours by the name of Sterling went to a Stone Canyon job, for the purpose of making a repair on a D.8 caterpillar tractor? A. I am.

Q. Do you know whether that equipment came from the Shepherd Company? A. It did.

(Testimony of Don C. Montgomery.)

Q. And was it sold or leased to McCammon-Wunderlich?      A. It was sold on a contract.

\* \* \*

Q. When was it sold?      A. March 1st.

Q. Was that covered by a guarantee or warranty?      A. It was covered by warranty.

Q. For what period?

A. A six months' period. [289]

\* \* \*

Q. (By Mr. Heimann): Mr. Montgomery, were there any negotiations with Local 12 during the last twelve months—between Shepherd and Local 12?

\* \* \*

The Witness: Yes.

Q. (By Mr. Heimann): Did you participate in any of these negotiations?      A. Yes.

Q. Would you tell us when these negotiations took place and with whom they took place and confine your answer to negotiations in which you participated, or occasions in which you participated in the negotiations?

A. The first contact with me was about January of this year by Mr. Willis of the Operating Engineers, and he called, according to his statement, to merely get acquainted and stated the fact that the union would like to establish a [290] contract with the Shepherd people and that they felt that the methods they had used in the past were not compatible with their present thinking.



(Testimony of Don C. Montgomery.)

And he left, stating that they would be in contact with us at some future date—nothing definite was mentioned. Next, we were contacted several times during—oh, I would say, March and April of this year—I think on each occasion Mr. Seymour and Mr. Bronson of the union came in.

Q. Do you know their capacities with the union?

A. Mr. Bronson is the manager, I think, of Local 12 and Mr. Seymour is his personal assistant.

Q. All right.

A. Or personal representative, I believe he signs his letters.

Q. All right.

A. And on these occasions, primarily was discussed the thought that the union should have a contract representing certain people in our business, certain people in our organization.

We were presented with a facsimile contract of, I believe it was Local 3, Operating Engineers, up in the San Francisco Bay region, and were told that that was merely an example of the type of contract that was negotiated in a shop operation such as ours.

Then we went through, perhaps one or two other similar [291] meetings and finally—I think it was the last time that Mr. Seymour and Mr. Bronson came out—they requested that we negotiate a contract with them and specifically stated that they would accept the same contract as they had previously submitted to us, the Local 3 contract.

Q. Was that the end of the negotiations?



(Testimony of Don C. Montgomery.)

A. Yes, that was the last negotiation we had. The next thing we know, there was a picket line established around the plant.

Q. Well, I believe you testified that they asked for a contract? A. Yes, they did.

Q. Well, what was Shepherd's answer to that?

A. Our answer was that we did not know whether or not they represented our people and we suggested that we should go to the National Labor Relations Board and have them conduct an election, to determine whether or not they represented our people.

Q. And is that how the negotiations broke off?

A. Yes, with a statement that no election was desired, as far as the union was concerned.

\* \* \*

Q. (By Mr. Heimann): Have there been any subsequent demands for recognition by the [292] union?

\* \* \*

The Witness: No.

\* \* \*

Q. (By Mr. Heimann): Were you notified of the filing of any representation petition by union—well, let me ask it that way?

A. Are you referring to a National Labor Relations Board petition?

Q. That is right.

A. No, I don't know of any they filed.

(Testimony of Don C. Montgomery.)

Q. Did the company subsequently file any petition?

A. Yes, following the last session we had with Mr. Seymour and Mr. Bronson, in order to determine whether or not the union represented the employees, we filed a petition for an election with the National Labor Relations Board. [293]

Mr. Heimann: Now, I ask the Trial Examiner and the Board to take official notice of Case No. 21-RM-347 which was filed on April 8 and dismissed by the disclaimer of the union on April 15th.

Mr. Nicoson: No objection to that.

Trial Examiner: All right.

\* \* \*

Q. (By Mr. Heimann): Now, after the dismissal of that petition, Mr. Montgomery, did the company file another petition? A. Yes, they did.

Q. Did you have anything to do with the filing of that petition?

A. It was filed at my direction.

Q. Will you give us the reason that you directed that to be filed?

\* \* \*

The Witness: Our employees had received a mimeographed—I believe—invitation to attend a labor meeting at which time—this was at the invitation of the union, at which time they were to discuss representation and we felt that the union had no longer acted consistent with their [294] dis-

(Testimony of Don C. Montgomery.)

claimer, and that they had, that they did have an interest with our people.

And we felt we should determine that, so we instructed for the petition for election to be refiled.

Q. (By Mr. Heimann): At that time, did you receive any letter from the union?

A. We had a number of exchanges of letters, yes, and I believe it was about that time that we had an invitation by letter from the union, to meet with them and discuss an agreement.

Q. And was it subsequent to that time that you filed the new petition? A. Yes.

Mr. Heimann: I ask the Trial Examiner and the Board again to take official notice of Case No. 21-RM-350, filed May 15, withdrawn by the company upon disclaimer by the Operating Engineers, and the Teamsters, on May 20th, with withdrawal approved on June 15th.

Trial Examiner: Any objection?

Mr. Nicoson: No objection.

Trial Examiner: All right. [295]

\* \* \*

**JOSEPH A. MUSSRO**

a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

**Direct Examination**

By Mr. Nicoson:

\* \* \*

Q. What is your business or occupation?

A. Business representative for the Operating Engineers, Local 12. [304]

\* \* \*

Q. Did you have occasion to be on a job known as the Crowell & Larson job in Glendora?

A. I did.

Q. What time did you arrive at that job? [305]

A. It was approximately 11:30 to 11:45.

Q. Why did you go to the job?

A. I didn't go to the job deliberately, I was out on routine job checking.

Q. And you did that at the job?

A. Yes, after making other job checks in the area.

Q. Did you stop at the job?

A. I did stop at the job.

Q. What did you do after you stopped at the job?

A. On arrival at the job I noticed the members were eating lunch, with the exception of one. I don't know if he was our member or not. He was driving a water wagon.

(Testimony of Joseph A. Mussro.)

And after parking my car, I went over and I saw Crook Company truck there which was parked right near. I went over and asked the [306] mechanic——

\* \* \*

Q. What question did you ask him?

A. How long he was going to be on the job.

Q. What did he say?      A. Fifteen minutes.

Q. What did you say, if anything?

A. Nothing.

Q. What did you do then?

A. I went ahead and started making a routine job check, checking the members' cards, their dues, and so on.

Q. Now, there has been some testimony here by Mr. Neuenschwander that said he was the man of Crook Company that you talked to out there that day, and he testified that you told him either to get off the job or you would shut the job down. Did you have any conversation with him like that?

A. No.

Q. Did you make any such statement to him at that time?      A. I did not.

Q. Or at any other time?      A. No.

Q. Did you tell any of the persons employed on that job that they should stop work that day?

A. No.

Q. Nor at any other time?      A. No.

Q. What did you do after you left this [308] mechanic?

A. I started making a routine job checking,

(Testimony of Joseph A. Mussro.)

checking cards and there was one member there that has been having a little trouble trying to change his name, which took up a little bit of my time. His name is Ulibarri and I was checking some of the cards of the other men while they were eating lunch.

Q. Now, how much time would you say that Mr. Ulibarri took up with you in the discussion of the name change?

A. Around fifteen to twenty minutes any way.

Q. And how many men did you check cards on that day?

A. I don't know; approximately seven or eight. I don't remember just how many it was because I do not have my list here.

Q. Ordinarily, how long would it take you to check the cards?

A. Well, it would depend upon that kind of a spread there would be, such as job elements. If the men were spread out over a big project, by the time you get from there to check the cards, well, it all depends on the spread.

This here, it happened to be that they were all in the one unit there, being at lunch time, as it was, with the exception of one water truck driver. I don't know how long it took me.

Q. Did these men have any questions to ask you that day?      A. Yes.

Q. And did you attempt to answer them? [309]

A. I did.



(Testimony of Joseph A. Mussro.)

Q. Do you recall any of the questions that were asked you and any of the answers you gave?

A. Yes.

Q. Will you tell us about that?

A. I remember one of them. The member said that—I don't know his name—let us see—what was his name, Smedley or something like that—Smedley said—rather, he asked me, “Do we still have a picket line on Crook Company?”

And Dias also asked me about the same questions, and I don't remember what I answered, whether I answered “yes” or “no,” because I was talking to Ulibarri and I was concentrating on his problem, more so than on anything else.

Q. Did you tell any of the employees of Crowell & Larson that day that they should quit their work so long as the Crook Company truck was there?

A. No, I did not.

Q. Did you tell any of them to quit work at all that day?

A. I did not tell anybody to quit work.

Q. Did you say this, in substance, to Mr. Smedley and Mr. Dias, that you were going to take the serial numbers of the truck and if you found out it did come through a picket line, you were going to shut the job down?

A. No, I did not.

Q. Did you say anything in that respect? [310]

A. No, but I did take serial numbers of two pieces of equipment.

Q. What time did you leave the job that day, if you left?

(Testimony of Joseph A. Mussro.)

A. Somewheres around—some time between 12:15 to 12:30, around there, I would say.

Q. Around 12:15 to 12:30?

A. I don't remember just exactly what time it was because I did have another appointment at Pacific Colony for 1:00.

Q. Where is Pacific Colony?

A. On Valley Boulevard, which is west of Pomona.

Q. Pomona, California? A. Yes.

Q. About how many miles?

A. I don't know, I would say it was between seven and eight miles, or something like that.

Q. What time was your appointment at this Pacific job? A. 1:00.

Q. Were you there on time?

A. I was. It was somewheres between 1:00, possibly a little before, because it was in around 1:00, right there, because when I got there, I remember talking to an electrician whom I knew, if he saw Mr. Stroner who I had an appointment with.

Q. How long were you on the Crowell & Larson job all told?

A. I would say somewheres around half an hour approximately any way, about half an hour [311] or so.

\* \* \*

(Testimony of Joseph A. Mussro.)

### Cross-Examination

By Mr. Heimann:

Q. Mr. Mussro, at the time you went to that job, the Crowell & Larson job, did you know what the employees' lunch hour was?

A. No, I did not.

Q. And you arrived there about 11:30 or about 11:45?      A. I did.

Q. Did you ask any one—or let me ask you this: When you got out there, you saw the Crook Company truck there?      A. Right.

\* \* \*

Q. (By Mr. Heimann): Do you remember that you gave a statement to one of the investigators of the National Labor Relations Board?

A. Yes.

Q. And that you signed that statement?

A. I did. [312]

\* \* \*

Q. Did you state to the Field Examiner—I withdraw the question. I will ask it again.

Did you state to the Field Examiner the following: [313] "To make this entirely complete, I will add that when I came onto the job and saw the Crook Company truck, I asked one of the men where the Crook Company man was and he pointed out the man to me"?

Mr. Nicoson: The question is, did he say that to the Field Examiner?

(Testimony of Joseph A. Mussro.)

Mr. Heimann: That is right.

The Witness: No.

Q. (By Mr. Heimann): Would you read this—strike that, please.

Did you read this affidavit before you signed it?

A. I read it hastily because I had another appointment. I don't know whether it was under oath or not.

\* \* \*

Q. (By Mr. Heimann): Will you read the first line of your statement? A. Yes. [314]

Q. Was that there when you signed it?

A. Yes, I believe it was.

Q. And you read it? A. Yes.

Mr. Heimann: Well, I now would like to read from that document that first line, which reads: "I, Joseph A. Mussro, being duly sworn, [315] state"——

\* \* \*

Q. Now, you are a business agent of Local 12, isn't that right? [317] A. I am.

Q. Isn't it your job to enforce union rules?

A. It is.

Q. Isn't it your job to see that union men do not work with nonunion men?

A. It isn't our job to take and go out and make an issue. I would like to say this in my own way, if you don't mind.

There are times that we make leniencies for harmony and complete friendship and sometimes we

(Testimony of Joseph A. Mussro.)

may enforce an issue and sometimes we do not enforce an issue. It all depends. [318]

\* \* \*

Q. And your arrival was at approximately 11:30 or 11:45?

(No response.)

Q. Isn't that what you said?

A. When I arrived where?

Q. At the Crowell & Larson job.

A. That was after 11:30; between 11:30 and 11:45.

Q. That is what I said. So, you were on that job approximately one hour, were you not?

A. I wasn't.

Mr. Heimann: I see. Well, I will let the record stand.

Q. (By Mr. Heimann): And during that time, whatever amount of time it was you were there, you checked about seven or eight cards?

A. I did.

Q. Now, ordinarily when you check cards, isn't it true that you check the card of one employee at a time?      A. That is right.

Q. And the others can go on working?

A. That is right. [320]

Q. Now, Mr. Nicoson asked you how long it would take ordinarily to make your check of seven or eight cards and you said it depends on how much the job is spread out?      A. That is right.

(Testimony of Joseph A. Mussro.)

Q. Now, at that particular time, the employees were all standing around you, were they not?

A. With the exception of one man, who was out on a water wagon.

Q. Now, how long does it ordinarily take you to check seven or eight cards of men who are bunched together with one exception?

A. It is hard to say because maybe one may have one or two questions and in this case here, they were eating lunch. I don't know how long it took me to check their cards.

Q. Now, some employees asked you questions about the picket line at Crook; is that right?

A. One did.

Q. And you said that was——

A. Smedley.

Q. Smedley?           A. Yes, and possibly Dias.

Q. Possibly Dias did, too?           A. Yes.

Q. Isn't it a fact that you mentioned the picket line at Crook first? [321]           A. No.

\* \* \*

Q. Well, do you remember who was the first one who brought it up?           A. No, I do not.

Q. But it would have been either Smedley or Dias?           A. It was either one of them.

Q. Do you know in response to what, if anything, they brought up the Crook Company picket line?           A. No, I have no idea.

Q. No idea what brought it up?

A. It was possibly—it might have been possibly



(Testimony of Joseph A. Mussro.)

in reference to—because Smedley said something about the two pieces of equipment coming from another job and he didn't know how they got there on the job at Puente. [322]

\* \* \*

Q. Now, you stated that you took the serial numbers of two pieces of equipment down; is that right?      A. I did.

Q. What equipment was that?

A. Two tournapulls.

Q. And where did those two tournapulls come from?      A. I don't know.

Q. And for what purpose did you take down the equipment number?      A. Just hobby.

Q. Just hobby?      A. That is right.

Q. Is it your hobby to take down equipment numbers?

A. I like taking down equipment numbers, yes. [323]

Q. Pardon?

A. I do take down equipment numbers.

Q. It is a hobby with you?

A. Yes, it is hobby with me.

Q. For no other purpose whatever?

A. None whatever.

Q. Now, how many pieces of equipment were on that job?      A. I don't know.

Q. Were there more than two?

A. There were more than two, yes. I didn't count the equipment on the job.

(Testimony of Joseph A. Mussro.)

Q. But you only took the numbers from the two tournapulls; is that right?

A. That is right.

Q. And were you going to check those numbers anywhere?

A. No. [324]

\* \* \*

### JAMES LUTHER

a witness called by and on behalf of the respondent,  
being first duly sworn, was examined and testified  
as follows:

#### Direct Examination

By Mr. Nicoson:

Q. Will you state your full name and address  
for the record, please?

A. James Luther. [326]

\* \* \*

Q. When—you were employed by McCammon-  
Wunderlich on May 23, 1955?

A. Yes.

Q. At the Stone Canyon job?

A. Yes.

\* \* \*

Q. Did anything happen that morning before  
you went to work? [327]

A. Yes.

Q. What time do you usually go to work?

A. 4:00.

Q. In the morning?

A. Yes.

Q. And what happened there at 4:00 in the  
morning?

(Testimony of James Luther.)

A. Well, some of the fellows got together and had a little talk.

\* \* \*

Q. Go ahead then and tell us what happened?

A. Some of the fellows got together and were talking about another fellow, a union member, who had been fined the week before for crossing the picket line and so we, more or less, decided among ourselves if any of the—— [328]

\* \* \*

Trial Examiner: Go ahead and tell us what took place among yourselves. This is on the morning of May 3rd. You had a discussion, I take it, from what you have already told us?

The Witness: Yes.

Trial Examiner: And what was the subject of discussion then?

The Witness: Well, it was of nonunion members coming in and working on the equipment, on our job and we decided [329] among ourselves, the next time they showed up on the job, that we would, more or less, go and get a drink of water until they left.

\* \* \*

Q. (By Mr. Nicoson): How many of the McCammon-Wunderlich employees were there when this thing happened?

A. You mean when we were talking?

Q. Yes.

A. Oh, I would say in the neighborhood of ten.

(Testimony of James Luther.)

Q. Were there more came up as the conversation was developing? A. Well, yes.

Q. After that you went to work, did you?

A. Yes.

Q. Later that morning, did you see a truck from the Shepherd Tractor Company come on the job? [330] A. Yes.

Q. What happened then?

A. Well, different members gave the signal among themselves to just pull up and go over and park.

Q. Is that what happened?

A. Yes, we all, more or less, stopped.

Q. What did you do?

A. I stopped and parked my rig where I was.

Q. Getting off of it? A. Yes.

Q. And standing by? A. Yes.

Q. How long a time did they stay there?

A. Twenty to thirty minutes.

Q. Did you then go back to work?

A. Yes.

Q. When did you go back to work?

A. When we saw the truck leave.

Q. When you saw the truck leave?

A. Yes.

Q. When you were together there that morning—strike that. Do you know a fellow by the name of “Red Hunter”? A. Yes.

Q. Does he work out there on the job?

A. Yes. [331]

(Testimony of James Luther.)

Q. Was he present when you were having this discussion at 4:00 in the morning?

A. No, he wasn't.

Q. Do you know how many pieces of equipment stopped that morning when the Shepherd truck showed up?

A. I would say eighteen to twenty.

Q. Eighteen to twenty? A. Yes.

Q. Now, had you been instructed or advised or directed by any representative of Local 12 to take this action? A. No, sir. [332]

\* \* \*

### RAYMOND L. THOMASON

a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Nicoson:

Q. Will you state your full name for the record?

A. Raymond L. Thomason.

Q. And what is your address?

A. 13364 Pinney Street, Pacoima.

Q. And what is your business or occupation?

A. Heavy duty operator.

Q. Were you so engaged on May 23rd, 1955?

A. I was.

Q. By whom were you employed on that date?

A. McCammon-Wunderlich. [343]

\* \* \*

(Testimony of Raymond L. Thomason.)

Q. Did anything hapen there that morning, before you went to work? A. Yes.

Q. Who was there when this thing happened?

A. Well, just the operators themselves.

Q. The men on the job? A. Yes.

Q. Working equipment like you? A. Yes.

Q. About how many of them would you say were there? A. Between eight or ten.

Q. Between eight or ten? A. Yes.

Q. Tell us what happened that morning?

A. We were all gathered around before work time and we decided we were not going to work with a nonunion member on the job, if one of them was to come on the job. If that happened, we were all going to shut down, go for a drink of water or do something else.

Q. Was Mr. Hunter there when this incident happened? A. No.

Q. Was any representative of the union present when this thing happened? A. No. [345]

Q. Then what did you do?

A. We went to work.

Q. Did you notice later on that day, a Shepherd truck being on the job? A. Yes.

Q. When did you first notice it?

A. Oh, I would say around 9:30.

Q. Where did you notice it?

A. Coming across the fill.

Q. That would be on the same job where you would have to take your load up, dump it and pass it; would that be right? A. Yes.



(Testimony of Raymond L. Thomason.)

Q. What did you do when you saw the Shepherd truck?      A. I pulled in and parked.

Q. Pulled in where?      A. On the ramp.

Q. On the ramp?      A. Yes.

Q. Going up or coming down?

A. Coming down.

Q. You had already dropped your load?

A. Yes.

Q. How long were you there?

A. Oh, approximately twenty to thirty minutes.

Q. Did other employees do the same thing as you did? [346]      A. Yes.

Q. And did you go back to work that day?

A. Yes.

Q. When did you go back to work?

A. After the truck left.

Q. Did anybody tell you to go back to work?

A. No. [347]

\* \* \*

Trial Examiner: I understand you have arrived at a stipulation concerning a communication from Local 12?

Mr. Nicoson: That is correct, your Honor. We are prepared to stipulate that there was such a document written by Mr. McNeel, addressed to the Board, in connection with certain representation cases which were on file with the Board, and the hearing has been held with respect to those cases.

And on page, I believe it is 41 of the transcript of that, [355] there is a verbatim reading of the contents of the so-called disclaimer letter.

Mr. Heimann: Pages 38 to 39.

Mr. Nicoson: Pages 38 to 39—which we would like to read into the record.

Trial Examiner: All right, but give us the case numbers, too.

Mr. Nicoson: Yes.

Mr. Heimann: The name of the case is Casey-Metcalf Machinery Company, etc., and International Union of Operating Engineers, Local No. 12, A. F. of L., etc., 21-RM-351, etc., date of transcript is June 23, 1955.

I will stipulate further, at the request of Mr. Nicoson, that that document went into evidence as Board's Exhibit No. 2-A and was a letter dated May 17, signed purportedly by H. M. McNeel, with a small letter "a" by the signature, addressed to the National Labor Relations Board at 111 West Seventh Street, Los Angeles 14, California, attention Louis Gordon, Field Examiner.

And I am quoting from that letter now:

"Re Shepherd Machinery Company, Case No. 21-RM-350, Casey-Metcalf Machinery Co., Case No. 21-RM-351; Crook Company, Case No. 21-RM-352; Electric Tool & Tool & Supply Company, Case No. 21-RM-353; George M. Philpott Company, Inc., Case No. 21-RM-354; Shaw Sales & Service Company, Case No. [356] 21-RM-355; Smith-Booth-Usher Company, Case No. 21-RM-356"; and that letter stated:

"We wish to inform you that the International Union of Operating Engineers, Local No. 12,

doesn't have claim to represent a majority of the employees in the units set forth in the above petitions."

That is followed by the purported signature of H. M. McNeel, International Labor Relations Representative, International Union of Operating Engineers, Local Union No. 12?

That is the end.

Trial Examiner: All right. That is your stipulation.

Mr. Nicoson: That is the stipulation.

Trial Examiner: Very well.

Mr. Nicoson: Mr. McNeel.

### HAROLD M. McNEEL

a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Nicoson:

\* \* \*

Q. What is your business or occupation?

A. I am assistant manager of Local 12 and Labor Relations [357] representative.

Q. How long have you held that position?

A. About six years.

Q. You just heard the stipulation read here into the record or a letter signed by Mr. H. M. McNeel?

A. Yes.

Q. Are you the same Mr. McNeel?

A. I am the same one.

(Testimony of Harold M. McNeel.)

Q. And you signed such a letter?

A. No, I was at San Diego that day and I had my secretary send the letter out.

Q. It was sent under your direction?

A. Yes, it was sent under my direction.

Q. What are your duties, Mr. McNeel?

A. Well, I have charge, and I am responsible for, all contracts, some two thousand of them, and also negotiations, handling of Board work and State compensation.

Q. By "Board," you mean National Labor Relations Board?

A. National Labor Relations Board, yes, and State Boards.

Q. Now, do you also have anything to do with the general labor relations picture of Local 12?

A. I do. [358]

\* \* \*

Q. (By Mr. Nicoson): Now, there is some evidence in the [359] record here, Mr. McNeel, that a consent election was held among the people of Crook Company on March 9th, 1955; that the union lost the election and directly after that started another picket line? A. That is true.

Q. Do you know why that picket line was established? A. Yes.

Q. Will you tell us why?

A. That one was established and charges were filed that the men had been discharged for union activity. Later, after the election, it was put back on again and that was for the purpose of recogni-

(Testimony of Harold M. McNeel.)

tion or recognizing the fact that these nonunion mechanics were doing the work that has been awarded by the American Federation of Labor, to the Operating Engineers.

And that is, that the Engineers shall repair and maintain all the equipment that they operate. [360]

\* \* \*

Q. And you are still maintaining the picket line at Crook Company? A. Off and on, yes.

Q. And for the same purpose? A. Yes.

Q. Do you have a picket line at the Shepherd Machinery Company? A. Occasionally.

Q. Do you know when that was established?

A. I could not give you the date, no.

Q. Do you know why it was established?

A. Yes.

Q. Why was it established?

A. For the same reason that we established the later picket line at Crook Company. [361]

\* \* \*

### Cross-Examination

(Continued)

By Mr. Heimann: [362]

\* \* \*

Q. (By Mr. Heimann): Mr. McNeel, isn't it a fact that the picket line at Crook Company started in February?

A. Well, I don't remember definitely, no, when it started.

(Testimony of Harold M. McNeel.)

Q. Isn't it a fact that the picket line at Crook Company started long before the discharges of these ten men?      A. No, I believe not.

Q. By the way, do you know whether these ten men were discharged, laid off, or what?

A. They were discharged.

Q. I see. And how do you know that?

A. That is what they said.

Q. That is what who said?

A. The men themselves.

\* \* \*

A. There was a letter that Crook gave to them, stating that [363] they were being let go. I don't know whether it was laid off or what.

Q. You don't remember whether it said discharged?      A. No.

Q. Let go or what it said?

A. They were letting them go, I think.

Q. Something like that?

A. Yes, something of that order.

Q. Now, when the consent election agreement and that "RC" case was approved, the picket line went off, is that right, Mr. McNeel?

A. I don't know.

Q. There was a consent agreement?

A. Yes.

Q. And the picket line was removed?

A. Yes.

Q. And it went back as soon as the election results were known?      A. That is right. [364]

\* \* \*



(Testimony of Harold M. McNeel.)

### Redirect Examination

By Mr. Nicoson:

Q. You said that the picket line, in answer to Mr. Heimann's question, was for the purpose of recognition of what?

A. Well, the union, to bring to the attention of all of the construction industry that the Crook Company, the Shepherd Company, and the others were employing nonunion men on our work, work that was assigned to us, to our jurisdiction. [365]

\* \* \*

### W. G. CROOK

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

### Direct Examination

By Mr. Heimann:

\* \* \*

Q. And are you the owner or principal stockholder or partner of Crook Company?

A. I am the principal stockholder.

Q. And do you have anything to do with the management of Crook Company?

A. Yes, sir, I do.

Q. You are the top boss; is that right?

A. That is right.

Q. Now, are you familiar with the fact that on

(Testimony of W. G. Crook.)

or about May 17, the Operating Engineers, Local 12, filed a disclaimer as to your employees?

A. Yes, I am aware of that fact. [370]

Q. Did you have any sort of communication from that union after that?

A. I had one call.

Q. Approximately when was that?

A. Approximately one week or ten days after the disclaimer.

Q. Who called you?

A. A gentleman named "Mr. Seymour."

Q. And what did he say?

A. He asked to make an appointment to meet me in the field.

Q. What did you say?

A. I asked him the nature of the business and he stated he would like to make an agreement with us and a contract as to our labor situation.

Q. And what did you say?

A. Well, I told him that, under the circumstances, that we had had an election, that I did not see it would be possible for us to enter into any agreement with the organization as I understood it was illegal after the employees had voted against the union. [371]

\* \* \*

## MICHAEL S. BESSICH

a witness recalled by and on behalf of the General Counsel, having been previously duly sworn, was examined and testified further as follows:

## Direct Examination

By Mr. Heimann:

\* \* \*

Q. On or about May 12th, did you receive a letter from the Operating Engineers and/or Teamsters? A. Yes.

Q. Do you have that letter with you?

A. No, I don't.

Q. Do you know what happened to that letter?

A. Yes.

Q. Will you tell us what happened to it?

A. Well, it was submitted as an exhibit in a representation hearing which we had here, approximately one month ago. [372]

\* \* \*

Q. (By Mr. Heimann): Mr. Bessich, there has been testimony that some ten of your employees were discharged or laid off, approximately at the time of the election—I forget the date—do you know of any layoffs or discharges? [373]

\* \* \*

The Witness: Yes, I gave the date. I did not give an approximate date. [374]

\* \* \*

Q. (By Mr. Heimann): Will you tell us approximately when they were made?

\* \* \*

(Testimony of Michael S. Bessich.)

The Witness: The layoffs were made effective February 15, 1955. [375]

\* \* \*

Q. (By Mr. Heimann): Now, were these men whose employment was severed in February, 1955, were they discharged or laid off?

A. They were laid off.

Q. Did they vote in the election?

\* \* \*

The Witness: Yes, they were permitted to vote.

Q. (By Mr. Heimann): Did the company challenge them? A. No.

Q. Has re-employment been offered to any of them?

A. Not until just recently, and we did offer—we have openings for possibly two men at the present, of which we have [376] made an offer to them to come in and discuss the possibility of going back to work.

Q. I see. And approximately when was that?

A. Actually I wrote them letters [377] yesterday.

\* \* \*

Mr. Heimann: Mr. Examiner, I have had marked for identification as General Counsel's Exhibit No. 7, a copy of a letter on the stationery of the International Union of Operating Engineers, addressed to Shepherd Tractor & Equipment Company, dated May 11, 1955.

I offer to stipulate that the original of that letter

was sent to Shepherd Tractor & Equipment Company and that another letter was sent to Crook Company, identical in all respects, except that it was addressed to Crook Company instead of Shepherd.

Also, that the original was signed by Mr. Seymour for the Operating Engineers, Local 12, and by Mr. Hatfield and Mr. Backus for Teamsters Local No. 495.

Mr. Nicoson: And will you accept the further stipulation that at or about the date shown on that, identical letters, with the exception as to the firm or person to whom it was addressed, were also sent to Casey-Metcalf Machinery, Electric Tool & Supply Company, George M. Philpott Company, Inc., Shaw Sales & Service Company, Smith-Booth-Usher Company, Brown-Bevis-Industrial Equipment Company, and as Mrs. Selvin has already pointed out, in the off-the-record discussion, they were also equipment dealers.

Will you accept that as part of the [398] stipulation?

Mr. Heimann: As to that, Mr. Examiner, I am willing to stipulate to the fact as related by Mr. Nicoson. However, I do not see the relevancy and I, therefore, object to its admission in evidence.

Trial Examiner: What difference does it make from your standpoint?

Mr. Nicoson: He has been arguing to show here that we are trying to obtain recognition from these two people. I am trying to show that we are not, that we have invited certain people to attend a

group meeting, for the purpose of discussion but not in an individual capacity.

Trial Examiner: I guess I had better look at that letter, Mr. Nicoson.

Mr. Nicoson: That is why I was so interested about the language of it.

Mr. Heimann: I want to say something about that, too, then.

Trial Examiner: Well, you have arrived at a stipulation, haven't you?

Mr. Heimann: He has not accepted it yet.

Trial Examiner: So far as the facts are concerned, the stipulation is accepted.

Mr. Heimann: Just for the record, do you join in the stipulation?

Mr. Nicoson: Yes, certainly. [399]

Mr. Heimann: All right.

Trial Examiner: I will admit the stipulation and consider it in respect to your argument, as to the attempt by the union to obtain recognition through the unlawful means; your argument being that it was a different situation and the fact that a number of equipment dealers were invited to attend this meeting tends to negate the inference that the General Counsel made.

Mr. Nicoson: That is it, that is right, that is the idea.

Mr. Heimann: We previously read into the record the union's disclaimer.

Trial Examiner: Yes.

Mr. Heimann: I think we named all the com-



panies that that disclaimer referred to, and I think those are the identical companies that Mr. Nicoson just mentioned.

Mr. Nicoson: That was my intention, yes.

\* \* \*

(The document heretofore marked General Counsel's Exhibit No. 7 for identification was received in evidence.) [400]

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GENERAL COUNSEL'S EXHIBIT No. 7

(Copy)

International Union of Operating Engineers

May 11, 1955.

Shepherd Tractor & Equipment Co.,  
Atlantic & Bandini Blvds.,  
Los Angeles 22, Calif.

Dear Sirs:

During the past several months, we have at various times, attempted to arrange a meeting with the Equipment Distributors in Southern California, for the purpose of discussing an Agreement between your firm and the below signatory Unions.

The Operating Engineers, in handling the procedures, have been advised by Mr. W. W. Shepherd of the Shepherd Machinery Company that he, Mr. Shepherd, had been delegated by the various firms to speak for them. In discussing this issue with

Mr. Shepherd, it was evident that we could not proceed and enter into negotiations.

We are, therefore, requesting that a representative of your Company be present May 16, 1955, at 10:00 a.m. at the Operating Engineers' Building, 2323 West 8th Street, Los Angeles, California, for the purpose of entering into negotiations with the Unions involved to conclude a workable Agreement. The Unions will have a proposal to offer at this meeting.

Sincerely,

R. B. BRONSON,

Business Manager, International Union of Operating Engineers Local Union No. 12.

By /s/ J. H. SEYMOUR,

Personal Representative to  
R. B. Bronson.

TEAMSTERS' AUTOMOTIVE WORKERS  
LOCAL UNION No. 495,

By .....,

FRANK HATFIELD,

Secy.-Treasurer;

.....,

TOM BACKUS,

President.

Received in evidence July 28, 1955.

\* \* \*

In the United States Court of Appeals  
for the Ninth Circuit

No. 15151

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 12,

Respondent.

CERTIFICATE OF THE NATIONAL  
LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board, Series 6, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a consolidated proceeding had before said Board, entitled, "International Union of Operating Engineers, Local 12, and Crook Company," Case No. 21-CC-198; and "International Union of Operating Engineers, Local 12, and Willard W. Shepherd and Norma D. Shepherd, d/b/a Shepherd Machinery Company," Case No. 21-CC-200, before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Stenographic transcript of testimony taken before Trial Examiner Wallace E. Royster on July 25, 26, 27 and 28, 1955, together with all exhibits introduced in evidence.

2. Stipulation, dated August 16, 1955, among the parties correcting transcript of testimony, and made a part of the record herein.

3. Copy of Trial Examiner's Intermediate Report and Recommended Order (annexed to item 6 hereof) and order transferring cases to the Board, both issued September 7, 1955, together with affidavit of service and United States Post Office return receipts thereof.

4. Respondent's exceptions to the Intermediate Report and Recommended Order received by the Board on October 3, 1955.

5. General Counsel's exceptions to the Intermediate Report and Recommended Order received by the Board on October 3, 1955.

6. Copy of Decision and Order issued by the National Labor Relations Board on January 9, 1956, with Intermediate Report and Recommended Order annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being there-

unto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 10th day of July, 1956.

[Seal]

NATIONAL LABOR RELATIONS BOARD,

/s/ FRANK M. KLEILER,

Executive Secretary.

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[Endorsed]: No. 15151. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. International Union of Operating Engineers, Local 12, Respondent. Transcript of Record. Petition for Enforcement of an Order of the National Labor Relations Board.

Filed July 11, 1956.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

[Title of Court of Appeals and Cause.]

PETITION FOR ENFORCEMENT OF AN  
ORDER OF THE NATIONAL LABOR RE-  
LATIONS BOARD

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, International Union of Operating Engineers, Local 12, Los Angeles, California, its officers, representatives, agents, successors, and assigns. The consolidated proceeding resulting in said order is known upon the records of the Board as "International Union of Operating Engineers, Local 12, and Crook Company," Case No. 21-CC-198; and "International Union of Operating Engineers, Local 12, and Willard W. Shepherd and Norma D. Shepherd, d/b/a Shepherd Machinery Company," Case No. 21-CC-200.

In support of this petition the Board respectfully shows:

(1) Respondent is a labor organization engaged in promoting and protecting the interests of its members in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.



(2) Upon due proceedings had before the Board in said matter, the Board on January 9, 1956, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, its officers, representatives, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the consolidated proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board, and requiring Respondent, its officers, representatives, agents, successors, and assigns to comply therewith.

Dated at Washington, D. C., this 1st day of June, 1956.

NATIONAL LABOR RELATIONS BOARD,

By /s/ MARCEL MALLET-PREVOST,  
Assistant General Counsel.

[Endorsed]: Filed June 4, 1956.

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[Title of Court of Appeals and Cause.]

On Petition for Enforcement of an Order of  
National Labor Relations Board

ANSWER OF RESPONDENT, INTERNATIONAL  
UNION OF OPERATING ENGINEERS,  
LOCAL NO. 12, AFL.

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

Comes now the International Union of Operating Engineers, Local No. 12, AFL, Respondent, for itself and no other, and files this, its Answer to the Petition for Enforcement of an Order of the National Labor Relations Board, and denies, admits and alleges as follows:

I.

Answering Paragraph I of the Petition for Enforcement of the Order of The National Labor Relations Board, the respondent, International Union of Operating Engineers, Local No. 12, AFL, admits that respondent is a labor organization engaged in promoting and protecting the interests of its respective members in the State of Cali-

fornia, and that it is within the judicial district of this honorable court, but denies that unfair labor practices involving this respondent occurred within this judicial circuit or within any other judicial circuit. Respondent International Union of Operating Engineers, Local No. 12, AFL, admits that this Court has jurisdiction under Section 10-E of the National Labor Relations Act, as amended, to review purported orders of the National Labor Relations Board.

## II.

Respondent International Union of Operating Engineers, Local No. 12, AFL, admits that on January 9, 1956, the National Labor Relations Board stated its Findings of Fact and Conclusions of Law and issued a purported order directed to Respondent, its officers, representatives, agents, successors and assigns. Respondent International Union of Operating Engineers, Local No. 12, AFL, further admits that a copy of said decision and purported order was served upon Respondent Union Local No. 12 on or about the same date.

## III.

Respondent International Union of Operating Engineers, Local No. 12, AFL, for itself and no other, answering Paragraph III of the Petition of the National Labor Relations Board to enforce its order, states that it has no knowledge that the National Labor Relations Board is certifying and filing with this Honorable Court a transcript of the entire record of the consolidated proceedings before

the Board, including the pleadings, testimony, evidence, Findings of Fact, Conclusions of Law, and the order of the Board sought to be enforced and, therefore, denies each and every allegation contained in said Paragraph (3).

#### IV.

International Union of Operating Engineers, Local No. 12, AFL, further answering said Petition alleges that the said Findings of Fact and Conclusions of Law, referred to in Paragraphs (2) and (3) of the said Petition for Enforcement, are not based upon substantial evidence on the record considered as a whole and, therefore, are void and of no effect.

#### V.

Respondent further answering alleges that the purported order of the National Labor Relations Board here sought to be enforced is not based upon substantial evidence on the record considered as a whole and, therefore, is null and void and of no effect.

#### VI.

International Union of Operating Engineers, Local No. 12, AFL, further answering said Petition for Enforcement alleges that the National Labor Relations Board does not have jurisdiction to issue an order in the above-entitled matter within the meaning of the National Labor Relations Act and, further, that it did not effectuate the policies of the Act or of the Board to do so.

Wherefore, having fully answered the Petition for Enforcement of the National Labor Relations

Board, International Union of Operating Engineers, Local No. 12, AFL, a Respondent herein, respectfully prays that the Petition for Enforcement of an order of the National Labor Relations Board be dismissed as to it and that said order of the National Labor Relations Board, with respect to Respondent be fully set aside.

/s/ DAVID SOKOL,

Attorney for International Union of Operating Engineers, Local No. 12, AFL.

Duly verified.

[Endorsed]: Filed June 11, 1956.

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[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH  
PETITIONER INTENDS TO RELY

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, petitioner in the above proceeding, in conformity with the rules of this Court hereby states the following points as those on which it intends to rely herein:

I. Substantial evidence supports the Board's finding that Respondent induced and encouraged employees of Crowell and Larson and of McCammon-Wunderlich Company to refuse to perform services for their respective employers with an object of forcing such employers to cease doing business with Crook and Shepherd, respectively, thereby violating Section 8(b) (4) (A) of the Act.

II. Substantial evidence supports the Board's finding that Respondent induced and encouraged employees of Crowell and Larson and of McCammon-Wunderlich Company to refuse to perform services for their respective employers with an object of forcing or requiring Crook and Shepherd to bargain with it as the representative of the Crook and Shepherd employees, respectively, without its having been selected as such representative, thereby violating Section 8(b) (4) (B) of the Act.

Dated at Washington, D. C., this 10th day of July, 1956.

NATIONAL LABOR  
RELATIONS BOARD,

/s/ MARCEL MALLET-PREVOST,  
Assistant General Counsel.

[Endorsed]: Filed July 12, 1956.

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[Title of Court of Appeals and Cause.]

On Petition for Enforcement of an Order of the  
National Labor Relations Board

STATEMENT OF POINTS ON WHICH RE-  
SPONDENT, INTERNATIONAL UNION  
OF OPERATING ENGINEERS, LOCAL  
NO. 12, AFL, INTENDS TO RELY

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

International Union of Operating Engineers,  
Local No. 12, AFL, Respondent in the above-en-



titled proceeding, in conformity with the rules of this Court, hereby states the following points upon which it intends to rely.

I.

The National Labor Relations Board is without jurisdiction over Respondent and the subject matter herein involved.

II.

That the Board's findings of fact and conclusions of law that the Respondent violated the Act, as amended, are not supported by substantial evidence on the record considered as a whole and are contrary to law.

III.

That the National Labor Relations Act, as amended, deprives Respondent of due process of law and is otherwise unconstitutional and void.

Respectfully submitted,

/s/ DAVID SOKOL,

Attorney for International Union of Operating Engineers, Local No. 12, AFL.

July 24, 1956.

[Endorsed]: Filed July 26, 1956.